

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NELLY LEONG, ) Case No.:  
 ) 3:21-cv-01291-VC  
Plaintiff, )  
 )  
vs. )  
 )  
INTERNATIONAL BUSINESS MACHINES )  
CORPORATION, )  
 )  
Defendant. )  
 )  
 )

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VIDEOCONFERENCE DEPOSITION OF NELLY LEONG  
Palo Alto, California  
Friday, April 15, 2022

Reported by:  
JANA J. BOMMARITO  
CSR No. 10880  
Job No. 5176800

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Defendant. )  
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Videoconference deposition of NELLY LEONG,  
taken on behalf of Defendant, in Palo Alto, California,  
beginning at 9:03 a.m., and ending at 4:22 p.m., on  
Friday, April 15, 2022, before Jana J. Bommarito,  
Certified Shorthand Reporter No. 10880.

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1 Palo Alto, California; Friday, April 15, 2022

2 9:03 a.m. - 4:22 p.m.

3  
4 NELLY LEONG,

5 having been first duly sworn by the Certified Shorthand  
6 Reporter, was examined and testified as follows:

7  
8 EXAMINATION

9 BY MR. BARNES:

10 Q. Good morning.

11 A. Good morning.

12 Q. We met off the record, but for the record, my  
13 name is Justin Barnes. I'm one of the attorneys  
14 representing IBM in the lawsuit that you filed, and  
15 we're here today to take your deposition. Appreciate  
16 you being here today and spending the time with us.

17 Could you start off just by stating your full  
18 name for the record.

19 A. Yes. My name is Nelly Leong.

20 Q. Thank you, Ms. Leong.

21 Have you ever gone by any other names?

22 A. My maiden -- well, yes. So at birth I was  
23 Sau Kuen, and my maiden name is Ng, yeah.

24 Q. Okay. You go by Nelly Leong now?

25 A. Yes.

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1 Q. Okay. Have you ever had your deposition  
2 taken before?

3 A. No.

4 Q. All right. What I'd like to do is start off  
5 just by kind of talking about the process, what to  
6 expect, and going over a couple of ground rules for --  
7 really for both of us to keep in mind in this process.

8 I'll be asking some questions. You'll be  
9 answering my questions. Your counsel, Mr. Williams,  
10 may speak from time to time, and during all of that our  
11 court reporter is going to be taking down everything  
12 that everyone says. And because of that it's really  
13 important that we keep a couple of things in mind so  
14 that we can get a nice clean transcript and so that we  
15 make our court reporter's life as easy as possible.

16 The first is, let's make sure we don't speak  
17 over each other. I'm going to try my hardest to let  
18 you finish your answer before I ask my next question,  
19 and I'd ask that you let me finish my question, get it  
20 all the way out, before you start answering.

21 And I'll tell you, that's really hard in  
22 normal conversation. You're going to probably see  
23 where I'm going with a lot of my questions and be  
24 tempted to start answering before I finish my question,  
25 but it's important that you let me get the full

1 question out, one, so that you understand my question,  
2 but, two, so that the court reporter can -- can take  
3 the whole thing down.

4 And from time to time your counsel may chime  
5 in and object to my questions, and so we need to give  
6 him time to speak as well. So let's all make sure that  
7 we don't talk over each other during the deposition.  
8 Okay?

9 A. Okay.

10 Q. Great.

11 Another important thing to keep in mind is to  
12 give verbal answers. It's hard for the court reporter  
13 to take down things like "uh-huh" or head nods, and so  
14 it's important that you speak up with your answers,  
15 "yes," "no." "I don't know" or "I don't remember" is  
16 always a perfectly acceptable answer or some  
17 explanation, but it's important that you give a verbal  
18 response. Okay?

19 A. Okay.

20 Q. It's also really important that you  
21 understand my questions, and this is particularly  
22 important given the remote nature of -- of us doing  
23 this. We've been doing this for a few years now  
24 remote, so I think we're -- we're getting pretty used  
25 to it, but occasionally my voice may drop out or I may

1 just ask a question in a way that doesn't make sense to  
2 you.

3 If you don't understand my question or you  
4 can't hear me, then please ask me to repeat my  
5 question. Okay?

6 A. Okay.

7 Q. If you don't ask me to repeat or rephrase my  
8 question, I'm going to assume that you understood my  
9 question.

10 Is that fair?

11 A. Yes.

12 Q. We'll take breaks. I usually take a break  
13 about every hour to an hour and a half, but this is not  
14 a marathon, so you can take a break sooner than that if  
15 you'd like. You can take a break anytime you'd like.  
16 The only caveat to that is, if there's a question  
17 pending, I'll ask you to answer the question before we  
18 take a break. Okay?

19 A. Okay.

20 Q. Excuse me.

21 You understand you're under oath today,  
22 right?

23 A. Yes.

24 Q. Are you on any medications today that you  
25 think would impact your ability to understand or answer

1 my questions?

2 A. No.

3 Q. Can you think of any reason why you wouldn't  
4 be able to give us your best testimony today?

5 A. None that I can think of.

6 Q. Great.

7 Let me ask you, what did you do to prepare  
8 for your deposition today?

9 A. I reread the documents that I provided to  
10 Mr. Williams. I read some of the documents that were  
11 shared with me by Mr. Williams.

12 Q. Do you remember what documents in particular  
13 you looked at?

14 A. Not exactly. I kind of skimmed through them.  
15 I noticed that there were a lot of duplicates, so after  
16 a while I skimmed through a lot.

17 Q. There's a lot of documents in this case.

18 A. A lot of documents, yeah, yeah. I didn't  
19 really have time, you know, earlier in the week because  
20 of work to get -- to start reading.

21 Q. Understood.

22 Can you think of any documents in particular  
23 that you looked at that stood out to you?

24 A. There was one. I think it was a handwritten  
25 note. I'm not sure who wrote it. It -- it appeared to



1 be notes taken by someone in a meeting with Todd Stacy  
2 and Robert Cortez where they -- where there were notes  
3 on the fact that I wasn't -- you know, I didn't shift  
4 into change in 2017, 2018, you know, something along  
5 that line.

6 Q. Okay. Anything else that you looked at that  
7 stood out to you?

8 A. I also saw two, looked like, quota letters  
9 for 2018 that listed Mr. Cortez and Mr. Stacy as my  
10 first and second line managers, and that's not what I  
11 recall who my management team was for that year. So  
12 other than that, I can't think of -- yeah, it was -- it  
13 was getting late.

14 Q. Sure, I understand.

15 Did anything that you reviewed surprise you  
16 or strike you as different than what you remembered,  
17 other than what you've already mentioned?

18 A. Surprise? I can't think of any right now,  
19 yeah.

20 Q. Okay. Other than your attorneys, have you  
21 discussed your deposition today with anyone else?

22 A. No.

23 Q. What is your current address?

24 A. 4156 King Arthur Court, Palo Alto, California  
25 94306.

1 Q. How long have you lived in California?

2 A. Oh, 25 years or so.

3 Q. Did you say 25 or 45?

4 A. 25.

5 Q. 25?

6 A. Yeah.

7 Q. And how long have you lived at the 4156 King  
8 Arthur Court address?

9 A. About 20 years, 20, 21 years.

10 Q. Do you own it?

11 A. Yes, with my husband.

12 Q. I was just about to ask if you were married.

13 A. Yes, I am.

14 Q. What does your husband do?

15 A. He owns a small business.

16 Q. What kind of business is it?

17 A. Custom printing, like local merchandise.

18 Q. What is the name of the business?

19 A. Uproar Ink, U-p-r-o-a-r I-n-k.

20 Q. How long has he been doing that?

21 A. Oh, it was registered late 2017, yeah,  
22 November, something like that, 2017.

23 Q. What did he do before that?

24 A. He took a -- a few years of gap, and then  
25 before that he worked for Microsoft as a evangelist

1 or -- or product manager, something like that, yeah.

2 Q. Evangelist, I like that term.

3 A. Yeah.

4 Q. Do you have any kids?

5 A. Yes.

6 Q. How many?

7 A. Three.

8 Q. How old are they?

9 A. 27, 20, 17.

10 Q. I assume the 17-year-old is still in school?

11 A. Yes.

12 Q. What about the other two? What do they do?

13 A. The 27-year-old, he is working. The

14 20-year-old, she is in college, third year.

15 Q. Where does she go to school?

16 A. She goes to UC Riverside.

17 Q. And your oldest is -- what does he do for a  
18 living?

19 A. He is a product manager at a software  
20 company.

21 Q. What's the name of the company?

22 A. Workday.

23 Q. Have you -- before this lawsuit have you ever  
24 filed any lawsuits against anyone else?

25 A. No.

1 Q. Has anyone ever filed a lawsuit against you?

2 A. No.

3 Q. Have you ever testified under oath in any  
4 other proceeding other -- before today?

5 A. No.

6 Q. Have you ever filed for bankruptcy?

7 A. No.

8 Q. Have you ever been charged with a crime?

9 A. No.

10 Q. Before the -- the charges that you filed with  
11 the California agency and the EEOC that led to this  
12 lawsuit, had you ever filed any sort of complaints with  
13 any government agency before that?

14 A. No.

15 Q. All right. Let me ask you to -- if you go to  
16 the Exhibit Share link --

17 A. Uh-huh.

18 Q. -- pull up what I've marked as Exhibit 33.

19 A. I don't -- I see 32.

20 Q. If you refresh, it should be --

21 A. Oh, okay.

22 Q. -- 33 now.

23 A. Okay. Oh, yes.

24 Q. And there's still a 32 sticker on it. That's  
25 my fault. We're going to correct that and put a 33

1 sticker on it.

2 And Jeremy, don't let me forget when I mark  
3 my next exhibit to make it 34. Otherwise, I'll get us  
4 way off the rails.

5 MR. WILLIAMS: That's all right. We -- we can get  
6 it handled.

7 MR. BARNES: All right.

8 (Whereupon Exhibit 33 was marked for  
9 identification, a copy of which is attached hereto.)

10 BY MR. BARNES:

11 Q. So Ms. Leong, I believe this is a copy of  
12 your LinkedIn profile; is that correct?

13 A. Yes.

14 Q. And I want to just walk through this and kind  
15 of go over some of your background. Let's start at the  
16 bottom.

17 A. Okay.

18 Q. On Page 2 in the Education section, this  
19 reflects that you have a Bachelor's in Industrial  
20 Engineering from New York Polytechnic School of  
21 Engineering.

22 A. Yes.

23 Q. Is that right?

24 A. Yes.

25 Q. When did you graduate?

1           A.    1985. I went to the 1985 graduation  
2 ceremony. I finished my degree in December of 1984.

3           Q.    Okay. Gotcha.

4                   And other than this degree in industrial  
5 engineering, do you have any other degrees?

6           A.    No.

7           Q.    Have you -- did you go to any other colleges  
8 for any period of time?

9           A.    Yes.

10          Q.    Where?

11          A.    I started taking classes for an M.B.A. degree  
12 when I was in Virginia at, I think it was, George  
13 Mason.

14          Q.    And you never finished that degree?

15          A.    No.

16          Q.    Okay. Have you attended any other colleges?

17          A.    No.

18          Q.    Was IBM your first job out of college?

19          A.    Yes.

20          Q.    I believe you started as an intern at IBM; is  
21 that right?

22          A.    Yes.

23          Q.    What was your job during your internship with  
24 IBM?

25          A.    The first one -- yeah. The first one I was

1 in the industrial end -- actually in the engineering  
2 group really helping with some system programming to  
3 support the manufacturing line.

4 Q. Okay. And that was during your internship?

5 A. Yes.

6 Q. What else did you do during your internship?

7 A. Are you asking for, like, which year, a  
8 specific year, or just in general? Because -- because  
9 I did two internships with IBM.

10 Q. Oh, you did? Okay.

11 What did you -- what did you do during your  
12 first internship with IBM?

13 A. I -- I can't remember which one is first.

14 Q. That's fine. It doesn't matter.

15 A. So one of them I was working in Armonk,  
16 New York in the headquarter office with the Building  
17 Engineering Department. I was a mechanical engineering  
18 major, so I helped them with mostly inventory and also  
19 dispatching the building maintenance technicians how to  
20 hang pictures for the CEO, you know, fix the --  
21 anything in -- in the building at the headquarter  
22 office. And then the other one was when I helped with  
23 system programming with the manufacturing line.

24 Q. Got it.

25 Did you spend any time at the -- attending

1 the University of Rochester?

2 A. Yes, I did. Oh, yes. Sorry.

3 Q. No, that's okay.

4 And -- and there may be times today where you  
5 forgot to say something or maybe you said something  
6 earlier that you feel like you need to clarify or  
7 correct. At any point you can go back and say, "Hey,  
8 you know what, I just remembered this," and -- and just  
9 let us know that. It's perfectly fine. Okay?

10 A. Yes.

11 Q. So it looks like you spent a few years at the  
12 University of Rochester before you went to the  
13 Polytechnic school, right?

14 A. Yes.

15 Q. What did you study at Rochester?

16 A. I studied mechanical engineering.

17 Q. Got it.

18 What -- what made you move from Rochester to  
19 the Polytechnic school?

20 A. Change of major.

21 Q. Going from mechanical to industrial?

22 A. Yes.

23 Q. I went to Georgia Tech undergrad, and we  
24 always called industrial engineering imaginary  
25 engineering.



1 A. Yes.

2 Q. So I'm sorry if I accidentally say "imaginary  
3 engineering" at some point.

4 A. That's okay. I've heard it before.

5 Q. Yeah, it's -- it's -- I keep having to stop  
6 myself, so no offense intended.

7 Okay. So you had the two internships with  
8 IBM, and then right after graduating, you joined IBM as  
9 an employee?

10 A. Yes.

11 Q. What was your first job at IBM?

12 A. My first job was with the Industrial  
13 Engineering Department, yes, as an industrial engineer.

14 Q. Okay. How long were you in the Industrial  
15 Engineering Department?

16 A. Until I transferred to New York City.

17 Q. When was that?

18 A. 1987.

19 Q. Okay.

20 A. '87, yeah.

21 Q. And what did you do once you transferred to  
22 New York City?

23 A. I went into sales.

24 Q. And you said that was 1987?

25 A. Yeah, around 1987.

1 Q. And I believe you've been in sales since then  
2 except for one period you were in marketing; is that  
3 right?

4 A. Yes.

5 Q. What was the time period you were in  
6 marketing?

7 A. Marketing, that would have been from '93  
8 until '96 -- '96, '97.

9 Q. Okay. So about three or four years?

10 A. Three or four years, yeah. I can't remember  
11 the exact duration I --

12 Q. Okay. So other than that three- or four-year  
13 period, you've been -- you were in sales at IBM from  
14 1987 through your termination, right?

15 A. Yes.

16 Q. At the time of your termination, you were in  
17 storage sales; is that right?

18 A. Yes.

19 Q. How long had you been doing storage sales?

20 A. I can't quite remember. I can't remember.

21 Q. Let's look at your -- your LinkedIn profile  
22 here.

23 A. Uh-huh.

24 Q. That might help.

25 A. Okay.

1 Q. I'm looking at your -- your -- the first job  
2 you have listed on here is sales rep starting in July  
3 1996.

4 So I take it that's when you moved out of  
5 marketing, was probably July of '96?

6 A. July '96, yes.

7 Q. Okay. And what was -- what were you selling  
8 in 1996 when you went back into sales?

9 A. I was selling at that time called a power  
10 system or RS/6000 power system.

11 Q. And what is that?

12 A. They are service. You know, they do  
13 computational processing.

14 Q. How long were you involved in server sales?

15 A. So I was involved strictly in server sales  
16 until 2008 when I became a manager, and I was  
17 responsible for a whole portfolio, server and  
18 storage --

19 Q. Okay.

20 A. -- for a couple of years.

21 Q. And that would be the system sales manager  
22 position on your LinkedIn profile here?

23 A. Correct, yes.

24 Q. And was that a people manager role?

25 A. Yes.

1 Q. How many people were you managing?

2 A. Four, four and a half. One -- one employee I  
3 shared with another manager, so we co-managed her.

4 Q. Okay. And then when you left that role in  
5 January 2010, did you go back to an individual  
6 contributor storage sales role?

7 A. Yes.

8 Q. And were you in storage sales from that point  
9 all the way through your termination?

10 A. Yes.

11 Q. Okay. And I think I know, but just so we get  
12 a clean record, what is storage?

13 A. Storage is basically systems where data  
14 resides, so anything, whether they are pictures, radio,  
15 documents. When you say you store them, it's kind of  
16 like your hard drive on your laptop but in a much  
17 larger scale.

18 Q. But much bigger than a laptop?

19 A. Much much bigger than a laptop, yes.

20 Q. Yeah.

21 A. And still a lot more (inaudible).

22 Q. Did you ever -- did you sell both hardware  
23 and software as it related to storage or just hardware?

24 A. Both, yes.

25 Q. And so IBM would sell the actual physical

1 storage hardware as well as the software used to run  
2 that hardware, right?

3 A. Yes.

4 Q. Okay. And I realize I'm jumping around a  
5 little bit here, but I'm trying to get a complete  
6 picture.

7 So in the time period you were in sales  
8 before you went to marketing, what were you selling  
9 during that time period? This would have been '87  
10 through roughly '93.

11 A. I was selling also all the servers, the  
12 mainframe, (inaudible) systems. Today they are known  
13 as power system running the i operating system and also  
14 the beginning of IBM PCs.

15 Q. Got it.

16 So it sounds like you've got a lot of sales  
17 experience in your career, right?

18 A. Yes.

19 Q. Would you consider yourself a seasoned sales  
20 representative?

21 A. Yes.

22 Q. And I assume that means you know what it  
23 takes to be a successful salesperson, right?

24 MR. WILLIAMS: Objection to form.

25 MR. BARNES: It leads -- let -- let me rephrase.

1 BY MR. BARNES:

2 Q. As it relates to storage sales, you know what  
3 it takes to be a successful sales representative,  
4 right?

5 MR. WILLIAMS: Same objection.

6 BY MR. BARNES:

7 Q. You can answer.

8 A. To the best of my understanding.

9 Q. Do you feel like you have the skills it takes  
10 to be successful at storage sales?

11 A. That's evolving because the products, new  
12 products are always introduced, so at point in time,  
13 yes.

14 Q. Let me -- let me -- that's fair. Let me  
15 narrow it down.

16 In the 2019 and 2020 time period, do you feel  
17 like you had the skills it took to be a successful  
18 storage sales rep?

19 A. Would you repeat that?

20 Q. Sure.

21 A. I'm not sure I understand what you're asking.

22 Q. In the 2019 to 2020 time frame, do you feel  
23 like you had the skills needed to be a successful  
24 storage sales rep at IBM?

25 A. To the best of, yeah, my knowledge, yes, I

1 do.

2 Q. You mentioned that products are always  
3 evolving and new products come in, right?

4 A. Yes.

5 Q. So I take it that means if you're not keeping  
6 up with that; your skills can become out of date,  
7 right?

8 A. If one decides not to keep up to date, yes.

9 Q. Did anyone ever tell you that your -- let me  
10 be more specific.

11 Did anyone at IBM ever tell you that your  
12 skills were out of date?

13 A. No.

14 Q. Do you believe your skills were out of date?

15 A. No.

16 MR. BARNES: All right. Let me introduce a few  
17 more exhibits here. The next one will be Exhibit 34.

18 (Whereupon Exhibit 34 was marked for  
19 identification, a copy of which is attached hereto.)

20 THE WITNESS: Do I just refresh?

21 BY MR. BARNES:

22 Q. Yeah, one second. Okay. It should be there  
23 now if you refresh.

24 A. Okay.

25 Q. This is a document entitled "Agreement

1       Regarding Confidential -- Confidential Information and  
2       Intellectual Property," right?

3           A.    Okay.  Yes.

4           Q.    Okay.  And if you look at the second page, is  
5       that your signature?

6           A.    Yes.

7           Q.    And you would have signed this when you  
8       joined IBM back in the '80s, right?

9           A.    Yes.

10          Q.    Okay.  When you were in sales at IBM, so the  
11       time periods you were in sales, you were paid a salary  
12       plus commissions, right?

13          A.    Yes.

14          Q.    And your -- you -- for the commission part of  
15       your pay, you were required to accept something called  
16       an Incentive Plan Letter, right?

17          A.    Yes, in -- yes.

18          Q.    And those Incentive Plan Letters would spell  
19       out the various terms of your commission plan, right?

20               MR. WILLIAMS:  Object to the form.

21               Go ahead and answer.

22               THE WITNESS:  They spelled out the goals, the  
23       object -- the goals.

24               BY MR. BARNES:

25          Q.    Okay.  Let me just ask it this way.



1                   What was your understanding of the Incentive  
2                   Plan Letter?

3                   A.    My understanding of the Incentive Plan Letter  
4                   is to provide a set of goals that I was asked to do my  
5                   best to achieve.

6                   Q.    And you were required to accept that  
7                   Incentive Plan Letter in order to get paid commissions,  
8                   right?

9                   A.    Yes.

10                  Q.    Okay. Take a look at what I've marked as  
11                  Exhibit 35.

12                               (Whereupon Exhibit 35 was marked for  
13                               identification, a copy of which is attached hereto.)

14                  BY MR. BARNES:

15                  Q.    I want to just ask you to confirm if these  
16                  are your Incentive Plan Letters from 2017. I believe  
17                  the first half of 2017 would be the first three pages,  
18                  and then the second half of 2017 would be the last  
19                  three pages. If you could take a look and confirm  
20                  that.

21                  A.    I can't confirm the numbers, but it looks  
22                  like an Incentive Plan Letter.

23                  Q.    Okay.

24                  A.    I cannot remember the numbers.

25                  Q.    So -- so you don't know whether these are

1 your Incentive Plan Letters or not?

2 A. I don't remember the numbers that were on --

3 Q. Okay.

4 A. Yeah.

5 Q. If -- if IBM said these were your Incentive  
6 Plan Letters from 2017, would you have any reason to  
7 dispute that or doubt it?

8 A. I don't suppose so.

9 Q. Okay. Now let me show you what I'll mark as  
10 Exhibit 36.

11 (Whereupon Exhibit 36 was marked for  
12 identification, a copy of which is attached hereto.)

13 BY MR. BARNES:

14 Q. And it's my understanding that -- okay. It  
15 should be up now. It's my understanding that  
16 Exhibit 36 would be the Incentive Plan Letters from  
17 2018, again, first half would be the first three pages.  
18 Second half of '18 would be the last three pages.

19 And the same question. If IBM said these  
20 were accurate copies of your IPLs from 2018, would you  
21 have any reason to -- to doubt that?

22 A. I do have a question about this one because I  
23 don't recall at that time that Mr. Robert Cortez was my  
24 manager, nor was Mr. Todd Stacy my second line.

25 Q. Okay. Other than that, is there anything

1           else that looks inaccurate about these to you?

2           A.    Again, I can't confirm the numbers because I  
3           don't remember.

4           Q.    So if IBM said that those were accurate  
5           numbers, would you have any reason to doubt that?

6           A.    For this one, yes, I do, because the  
7           management -- the manager names do not appear to be  
8           correct based on what I remember.

9           Q.    Okay. So it's my understanding that when  
10          IPLs get printed out, it just lists the last manager in  
11          those slots, and that's why Robert and Todd would be  
12          listed there, because Robert was your first line  
13          manager at the time of your termination, right?

14          A.    Yes.

15          Q.    And Todd was second line manager at the time  
16          of your termination, right?

17          A.    Yes.

18          Q.    And so it's my understanding that's why  
19          they're listed there, is because of when they're  
20          printed out, it just lists the last managers, and so  
21          that's my understanding about that point.

22                With that explanation, do you have any reason  
23          to doubt whether the rest of the information in here is  
24          accurate or not?

25          A.    On the 2017 Incentive Plan Letter, it did

1 show Amy Buyarski, who was my manager at that time.

2 Q. Okay. We've got to determine whether we can  
3 authenticate these documents or not, and I need to know  
4 the basis for why you won't authenticate 2018 IPLs.

5 So far you've mentioned the manager. Is  
6 there any other basis?

7 MR. WILLIAMS: Objection to form.

8 THE WITNESS: I don't know how to answer that  
9 question.

10 BY MR. BARNES:

11 Q. What's confusing about the question?

12 A. That when I -- the names would be -- could  
13 have been incorrect.

14 Q. And I'm saying other than the names, is there  
15 anything else about Exhibit 36 that you think would be  
16 inaccurate?

17 A. Oh, okay. Now -- yes.

18 Q. What else?

19 A. I was not an IQP rep at any time in 2018. I  
20 did not even notice that.

21 Q. You were not on an Individual Quota Plan in  
22 2018?

23 A. IQP, yes, I -- I was. Sorry, I -- I -- I was  
24 confused with the acronyms.

25 Q. Okay. IQP stands for Individual Quota Plan,

1 right?

2 A. Right.

3 Q. And that's a type of sales plan at IBM?

4 A. Yes.

5 Q. And you were on an IQP in 2018, right?

6 A. Yes.

7 Q. Okay. So is there anything else about  
8 Exhibit 36 that you don't think is accurate?

9 A. I don't know for sure.

10 Q. Okay. And so if IBM said these were accurate  
11 copies of your Incentive Plan Letters from 2018, aside  
12 from noting the issues about your managers, your  
13 response would be, "I don't know whether they are or  
14 not."

15 Is that what you're saying?

16 A. I suppose my response would be if IBM said  
17 these -- this is the Incentive Plan Letter that I  
18 received back then, I would trust the numbers to be  
19 right because I cannot remember whether they are or  
20 not, but I will trust IBM on that. But I also wonder,  
21 right, why the names would be incorrect and if there  
22 would be anything else that made it not as accurate as  
23 possible.

24 Q. Okay. I think that answers my question.

25 All right. Let's take a look at Exhibit 37.

1           A.    Okay.

2                   (Whereupon Exhibit 37 was marked for  
3   identification, a copy of which is attached hereto.)

4   BY MR. BARNES:

5           Q.    It's my understanding that Exhibit 37 are  
6   your IPLs from 2019.  First three pages would be the  
7   first half, and the last three pages would be the  
8   second half of 2019.

9           A.    Okay.

10          Q.    And -- and the same question about whether  
11   you would have any reason to doubt whether these are  
12   accurate versions of your IPL.

13          A.    Besides the manager names to be inaccurate --  
14   actually, for 2019 I do -- I do recall that Todd Stacy  
15   was my second line but not Robert Cortez.  So besides  
16   that, my -- what was your question again?

17          Q.    Just whether there's anything else that --  
18   that you don't know whether it would be accurate or  
19   not.

20          A.    No.

21          Q.    Okay.

22          A.    Not that I can see.

23          Q.    And so I noticed that in -- let's look at --  
24   keep looking at Exhibit 37, for example.  Your -- your  
25   primary revenue element there has a quota of about

Page 33

1 3.2 million, right?

2 A. I -- may I ask, are you looking at the first  
3 half?

4 Q. Yes, first half.

5 A. Okay. Yes.

6 Q. And then the second half has a quota of about  
7 2.5 million, right?

8 A. I'm looking for it. Yes.

9 Q. And then if we -- if we go back to Exhibit 36  
10 from 2018 --

11 A. 2018.

12 Q. -- it looks like for the first half your  
13 primary element had a quota of about 4. -- a little  
14 under 4.5 million, right?

15 A. Yes.

16 Q. And then second half, it was about  
17 4.3 million, right?

18 A. Yes.

19 Q. So it looks like your quotas went down from  
20 2018 to 2019, right?

21 A. Yes, because my role changed.

22 Q. Okay. Your role changed in the first half of  
23 2019?

24 A. My territory changed in first half 2019. My  
25 role changed in second half of 2019.

1 Q. Okay. Your -- let's go back and look at  
2 Exhibit 35, your 2017 IPLs. It looks like primary  
3 element in the first half of 2017 was about a little  
4 under 3 and a half million, right?

5 A. Yes.

6 Q. And the second half was about 3.3 million,  
7 right?

8 A. Yes.

9 Q. So -- so your quota went up from '17 to '18;  
10 is that right?

11 A. Yes.

12 Q. Did your accounts stay the same from '17 to  
13 '18?

14 A. Very similar.

15 Q. Okay. Do you know how quotas are calculated?

16 A. Yes.

17 Q. How?

18 A. Based on the weighted average of the  
19 account's attainment for the previous three years.

20 Q. Okay. So what that account had spent for the  
21 last three years is used to estimate what they'll spend  
22 in the upcoming year?

23 A. That's my understanding.

24 Q. Got it.

25 And in the 2017 and 2018 time frame, were --



1           were you -- what was the geographical territory that  
2           you were working in?

3           A.     It was not geographical.

4           Q.     So you had accounts all over the country?

5           A.     I have accounts still belong to the west  
6           region, but they have locations all over the country.

7           Q.     Okay. So your 2017 IPL -- actually, let's  
8           look at your 2018 IPL --

9           A.     Okay.

10          Q.     -- Exhibit 36.

11                     It says "Named accounts in California,  
12           Washington, and Oregon," right?

13          A.     Yes.

14          Q.     And so California, Washington, and Oregon, is  
15           that where your clients were headquartered at least?

16          A.     Yes.

17          Q.     Did you work more in California or Oregon or  
18           Washington?

19          MR. WILLIAMS: Objection to form.

20                     THE WITNESS: As I mentioned, it -- its  
21           accounts -- account dependent. For example, McKesson's  
22           headquarter was in California. The Data Center is in  
23           Virginia and Atlanta, Georgia.

24          BY MR. BARNES:

25          Q.     Okay. Let me ask my question in a different

1 way.

2 Did you work more with accounts that were  
3 headquartered in California or Washington or Oregon or  
4 was it evenly split?

5 A. Evenly split.

6 Q. And how long had you been working with  
7 clients that were headquartered in those three states?

8 A. I -- in California, since I became storage  
9 sales, since I joined the storage sales team. In  
10 Washington, Oregon, fairly new in 2017, '18.

11 Q. All right.

12 A. That's what I recall, yeah.

13 Q. Got it. Thank you.

14 A. Yeah.

15 Q. Okay. Now let's take a look at Exhibit 38 --

16 A. Okay.

17 Q. -- which I believe is your Incentive Plan  
18 Letter from the first half of 2020.

19 (Whereupon Exhibit 38 was marked for  
20 identification, a copy of which is attached hereto.)

21 BY MR. BARNES:

22 Q. If you could look at it and confirm.

23 A. Oh, I'm sorry. I opened 36 instead.

24 Q. Oh, no, that's okay.

25 A. Okay.

1           Q.    So is Exhibit 38 a copy of your Incentive  
2 Plan Letter from the first half of 2020?

3           A.    I would say for most part except for the  
4 "Territory Opportunity: \$1," that line. I don't recall  
5 ever seeing that on my Incentive Plan Letter.

6           Q.    Got it.

7                   Do you know what "Territory Opportunity"  
8 means?

9           A.    Yes.

10          Q.    What does that mean?

11          A.    The potential, right, of revenue potential  
12 in -- in that territory, the accounts that you -- that  
13 you received as part of my territory.

14          Q.    Got it.

15                   And in -- in 2020 you were put on what's  
16 called a Straight Rate Absolute Plan; is that right?

17          A.    That's what I recall.

18          Q.    And the Straight Rate Absolute Plan is  
19 basically you're paid a percentage of revenue you  
20 achieve, right?

21          A.    Yes.

22          Q.    And so for purposes of your incentive plan,  
23 your attainment's not measured against any sort of  
24 quota; is that right?

25          A.    That was my understanding.

1 Q. But I assume there was still some -- some  
2 expectation that you would deliver more than a dollar  
3 worth of revenue.

4 Is that fair?

5 MR. WILLIAMS: Objection to the form.

6 THE WITNESS: I have expectation of myself  
7 delivering more than a dollar, even though that dollar  
8 value was not on my version of the letter.

9 BY MR. BARNES:

10 Q. Did your version of the letter contain any  
11 dollar figure that you recall?

12 A. Not that I recall. I don't remember.

13 Q. And I know you said you have expectations of  
14 yourself.

15 What were your expectations of yourself about  
16 the territory opportunity in 2020?

17 A. Make a lot of money.

18 Q. That's fair.

19 Did you have any sort of expectation about  
20 how much revenue you could achieve in the first half of  
21 2020?

22 A. I did not, because they were all new accounts  
23 that no one knew much about.

24 Q. Did your managers ever tell you how much they  
25 expected you to sell in the first half of 2020?

1 A. If they did, I don't remember.

2 Q. All right. Let me pull up something that  
3 might help. I will introduce what I've marked as  
4 Exhibit 39.

5 A. Okay.

6 (Whereupon Exhibit 39 was marked for  
7 identification, a copy of which is attached hereto.)

8 BY MR. BARNES:

9 Q. Let me know when you have it.

10 A. I have it.

11 Q. Okay. So this Exhibit 39 is a -- is an email  
12 chain. I want to ask you to focus on the first page,  
13 bottom of the page there's an email from Sandra  
14 Florey --

15 A. Uh-huh.

16 Q. -- to a number of people, including you,  
17 right?

18 A. Right.

19 Q. And it's --

20 A. That's what it looks, yeah.

21 Q. It's dated January 10, 2020, right?

22 A. Yes, I -- that's what I'm reading, yes.

23 Q. And Sandra says here "Territory Reps," so I  
24 assume the other people that this email is to were  
25 other territory reps on your team; is that right?

1           A.    On the -- I believe so. On the bottom half  
2 of the letter, yeah, I believe so.

3           Q.    Right. There's Don Custardo, Henry Stipe,  
4 John Egan, Laura Cook, you, and Randall Whitfield.

5                   Were those people all on your team?

6           A.    They were on my team. I did not know all of  
7 them to be certain that they are on -- they are on  
8 the -- they are territory reps or not.

9           Q.    Got it.

10          A.    Yeah.

11          Q.    Okay. I understand.

12                   And who's Sandra Florey?

13          A.    At that time she was my first line manager.

14          Q.    Okay. And Sandra says "While I haven't seen  
15 quota files and territory reps don't actually receive  
16 quotas, please use 1.6 million as your 1H target for  
17 planning purposes," right?

18          A.    That's what I'm reading too, yeah.

19          Q.    And so Sandra was informing you that you  
20 should assume your target for the first half of 2020  
21 was \$1.6 million, right?

22          A.    That's what it says on there, yes.

23          Q.    And was that your understanding?

24          A.    I actually don't recall.

25          Q.    That's fine. Look, this was a couple years

1       ago, so if there's anything you don't remember or you  
2       don't recall, that -- that is a perfectly acceptable  
3       answer.

4               She goes on to say "Assume 1Q is 40 percent  
5       of that or 640,000," correct?

6               A.    Yes, that's what it says, yeah.

7               Q.    And so presumably the remaining 60 percent  
8       would be in the second quarter.

9               Is that fair?

10              A.    Yes, that's usually, yeah, the split.

11              Q.    That's what I was going to ask.

12              Usually do you assume 40 percent in first  
13       quarter and 60 percent in second quarter?

14              A.    Sometimes it's different.

15              Q.    Okay. All right. Now let me show you what  
16       I'm marking as the next exhibit. This will be  
17       Exhibit 40.

18              A.    Okay.

19              (Whereupon Exhibit 40 was marked for  
20       identification, a copy of which is attached hereto.)

21       BY MR. BARNES:

22              Q.    You should have it now.

23              A.    Okay.

24              Q.    So I will represent to you that this is a  
25       summary of your compensation from 2013 through 2020

1 through your termination, and I just want to ask you a  
2 couple of questions about this.

3 So for each year there's various lines here,  
4 and I want to look first at the salary line.

5 So it looks like in 2013 your salary was  
6 around \$121,000 on this document, right?

7 A. Yes, that's what I'm seeing too.

8 Q. And then it looks like in 2014 it goes down  
9 to \$112,000.

10 Do you remember that happening?

11 A. I can't say I remember.

12 Q. Okay. And then the next few years, '15, '16,  
13 '17 really through your termination, you start getting  
14 raises, it looks like, pretty much every year, right?

15 A. Yes, it looks like it.

16 Q. And is that consistent with your  
17 recollection, that you got raises pretty much every  
18 year?

19 A. Yes.

20 Q. Who decided whether to give you a raise and  
21 how much?

22 A. It's my understanding that my first line  
23 manager would make the recommendation and then present  
24 it to management for approval.

25 Q. Okay. And from 2017 to 2018, it looks like



1           your salary went up pretty significantly, almost  
2           \$25,000.

3                     You see that?

4           A.     Yes.

5           Q.     And is that consistent with your  
6           recollection, that you got a pretty big raise in 2018?

7           A.     Yes.

8           Q.     And was that based on your 2017 performance?

9           A.     I would suppose so.

10          Q.     Who was your first line manager in 2018? Was  
11          it Amy Buyarski?

12          A.     That's who I -- who I remember, yes.

13          Q.     And so is Amy the one who would have  
14          recommended this almost \$25,000 raise for you?

15          A.     It will probably be -- I -- I don't know  
16          who -- I -- I would guess she -- she was part of it,  
17          but -- but she was my new manager at the time.

18          Q.     Okay. It also looks like in 2017 in terms of  
19          commissions, at least in this summary, 2017, was your  
20          best year commission-wise.

21                     Is that your recollection as well?

22          A.     Based on this document?

23          Q.     If -- not just based on this document.

24          A.     Okay.

25          Q.     But your recollection, do you recall that

1           2017 was your best year commission-wise?

2           A.    My recollection, my best year was probably  
3           2000 because of Y2K, so I was very successful in 1999.

4           Q.    Got it.

5           A.    Yeah.

6           Q.    That makes sense.

7                        So we'll say in this time period, from 2013  
8           through your termination, would 2017 have been your  
9           best year commission-wise?

10          A.    Yes.

11          Q.    Okay. And you ended up getting Best of IBM  
12          as a result of your 2017 performance, right?

13          A.    Yes.

14          Q.    What is Best of IBM?

15          A.    Best of IBM is a global award for the top  
16          quarter percent of employees who have high -- very high  
17          performance.

18          Q.    Had you ever gotten Best of IBM before that?

19          A.    I got something similar. It's -- I believe  
20          it's called Global -- now I can't remember the full  
21          name. It is another Global award. That would have  
22          been 1998 or '99 -- I can't remember -- somewhere  
23          around there.

24          Q.    I know for at least some years if you made  
25          Best of IBM, you got to, like, go on a trip, right?

1 A. Yes.

2 Q. Did you get to go on a trip?

3 A. The Best of IBM in 2018 was to the Bahamas.  
4 The earlier Global award, it was a Mediterranean  
5 cruise.

6 Q. Wow.

7 A. Yeah.

8 Q. I need to tell my firm to step it up.

9 MR. WILLIAMS: I think we're both doing it wrong,  
10 Justin.

11 BY MR. BARNES:

12 Q. That's great.

13 So how does the nomination process for Best  
14 of IBM work?

15 A. My understanding is you have to -- your --  
16 your percent attainment has to be very high. Your  
17 customer sat has to be very high. Although, it's not  
18 measured on an (inaudible), but I guess you don't get  
19 complaints from customers.

20 And then -- then it's a nomination process,  
21 and I believe the 2018 Best of IBM, all the nominations  
22 went up to our then CEO, Ginni Rometty, and she made  
23 the final decision. That was my understanding, yeah.

24 Q. Who initially nominated you?

25 A. I don't know.

1 Q. At the time in the -- when -- when did they  
2 decide Best of IBM? Was it early 2018?

3 A. That's when they announce who the winners  
4 are. Then -- then -- then -- yeah, then you're  
5 informed of which -- there were two groups, yeah.

6 Q. And it was -- I believe it was based on your  
7 2017 performance, right?

8 A. That's my understanding, yes, yeah.

9 Q. Who was your first line manager at the  
10 beginning of 2018 when they announced Best of IBM? It  
11 was Amy Buyarski, right?

12 A. It was Amy, yes.

13 Q. Who was your second line manager?

14 A. I recall that to be Mark Dawson.

15 Q. What did you think of Mark and Amy as  
16 managers?

17 A. Would you clarify what -- you know, as a  
18 person or as -- yeah.

19 Q. As a manager. We can start with Amy.

20 What did you think of Amy as a manager?

21 A. They both are very -- they have very much  
22 a -- a collaborative style, coaching, and supportive.

23 Q. Did you like them both as managers?

24 A. Yes, I did.

25 Q. You enjoyed working with them?

1           A.    Yes, I did.

2           Q.    And in 2017 do you remember who your managers  
3           were?

4           A.    I seem to recall that Michael Hardoin might  
5           have been my first line manager for most of the year or  
6           maybe Amy. Now I can't remember. I think Mike and Amy  
7           split the year.

8           Q.    So Mike started off as your manager in 2017,  
9           and then Amy took over at some point in 2017?

10          A.    That's kind of how I remember.

11          Q.    And then Amy continued to be your manager in  
12          2018?

13          A.    That's what I remember, yes.

14          Q.    Okay. Throughout 2017 through the end of  
15          your employment, were you always selling the same thing  
16          or did that vary?

17          A.    That varied.

18          Q.    Okay. So in 2017 what were you selling?

19          A.    I was selling the entire storage portfolio.

20          Q.    What about in 2018?

21          A.    2018 was -- I cannot -- I cannot say for  
22          sure, but IBM started splitting out the hardware from  
23          software and turn it into two different portfolios, and  
24          then -- and there were also other people who were  
25          responsible for the software portfolio. So on the

1 hardware portion, I was still responsible for the  
2 entire hardware portfolio.

3 Earlier you asked me whether IBM, you know,  
4 sold the systems with hardware/software. That was a  
5 switch in product strategy, that hardware and software  
6 got split up.

7 Q. Okay. So in 2017 you were hardware and  
8 software, and then in 2018 you were hardware only?

9 A. Like I said, I can't remember whether it was  
10 '18 when that product strategy changed or sales  
11 strategy changed. I know that I've always had  
12 hardware. Was it -- I cannot remember whether it was  
13 '18 when -- but it was -- so when that changed,  
14 whatever year it turned out to be, I would still get  
15 part of the software revenue, but I was not the primary  
16 salesperson.

17 Does that make sense?

18 Q. Yeah, I'm following you.

19 A. Okay. Yeah, because it's still my account,  
20 so I was more in an assist role, if I -- there was one  
21 period of time, that's how it was arranged.

22 Q. Got it.

23 And I believe you said earlier that your  
24 clients stayed the same, for the most part, from 2017  
25 to 2018; is that right?

1           A.    I may have gotten, if I recall correctly, a  
2           couple less, but the larger ones I continued to have in  
3           2018.

4           Q.    Got it.

5           A.    Yeah.

6           Q.    All right. Let me show you the next exhibit.  
7           This will be Exhibit 41.

8           A.    Okay.

9                   (Whereupon Exhibit 41 was marked for  
10           identification, a copy of which is attached hereto.)

11          BY MR. BARNES:

12          Q.    Let me know when you have it.

13          A.    Yes, I do have it.

14          Q.    Okay. So Exhibit 41 is your 2018 Global  
15          Performance Assessment, right?

16          A.    Yes.

17          Q.    And if you go to the bottom, it looks like it  
18          was completed by Amy Buyarski, right?

19          A.    Yes.

20          Q.    And it's dated 2/28/2019, right?

21          A.    Yes, that's what it says.

22          Q.    Which would have been -- that would have been  
23          when Amy delivered the assessment to you, right?

24          A.    Yes.

25          Q.    Okay.

1 A. That's what this says, yeah.

2 Q. So if you -- if you go to Page 3, that's  
3 where the Dimension Ratings start, right, on the bottom  
4 of Page 3?

5 A. Yes, I see it.

6 Q. And then on the next page there are five  
7 different dimensions that you're rated on, right?

8 A. Yes.

9 Q. It looks like -- so we'll just run through  
10 them real quick. For Business Results, Amy rated you  
11 as an Expects More, right?

12 A. Yes, as far as I'm reading.

13 Q. Of the ratings, Expects More is the lowest,  
14 then it's Achieves, then it's Succeeds; is that right?

15 A. I cannot say for sure for 2018, but I seem to  
16 recall that there's one lower than Expects More.

17 Q. Well, if you -- if you look here, it says  
18 "Business Results" and then it says -- has the three  
19 categories, Exceeds, Achieves, and Expects More, right?

20 A. Okay.

21 Q. And then it explains what each of those  
22 means.

23 Do you see that?

24 A. Would you point me to the page?

25 Q. Bottom of Page 3, top of Page 4.



1 A. Okay. Yes, I see, yes.

2 Q. Are those the three categories that the  
3 manager --

4 A. That's correct. Yes, that's correct.

5 Q. And so she rated you Expects More for  
6 Business Results, right?

7 A. Yes.

8 Q. Exceeds for Client Success, right?

9 A. Yes.

10 Q. Achieves for Invasion, right?

11 A. Would you repeat how you rate it?

12 Q. Yes. So we can start back at the beginning.  
13 Business Results she rated you Expects More,  
14 right?

15 A. Yes. Yes.

16 Q. Client Success she rated you as Exceeds,  
17 right?

18 A. Yes.

19 Q. Invasion, she rated you as Achieves, right?

20 A. Yes.

21 Q. Responsibility to Others, she rated you as  
22 Achieves, right?

23 A. Yes.

24 Q. And then Skills she rated you as Expects  
25 More, right?

1 A. Yes.

2 Q. Did you agree with this assessment?

3 A. At the time I agreed to it because I only  
4 focused on the Business Results, and I agreed with  
5 her --

6 Q. Okay.

7 A. -- where I stood at that time, yeah.

8 Q. And I forgot to ask you this.

9 Who was your second line manager in 2018?  
10 Did it continue to be Mark?

11 A. I -- 2018, if I recall correctly, I think it  
12 was Mark for part of the year, and then -- and then I  
13 don't recall whether John Rafferty came back as a  
14 second line or the third line, but I -- I recall he did  
15 come back to the storage group.

16 Q. Okay.

17 A. So I cannot -- I cannot remember who the  
18 second line was, but I believe Mark started the year.

19 Q. Okay. And eventually Todd Stacy became your  
20 second line, but that wasn't until 2019, right?

21 A. That's how I recall it, yes.

22 Q. Okay. Okay. And then back to this  
23 Exhibit 41, your 2018 assessment, under the Skills  
24 rating here, bottom of Page 4 it says "Optional: Nelly  
25 Leong, any other comments for the year?"

1 Do you see that?

2 A. Yes.

3 Q. And then below that you wrote that in there,  
4 right, where it says "2018 was a tough year"?

5 A. Uh-huh.

6 Q. Yes?

7 A. Yes.

8 Q. Okay. You say "2018 was a tough year with  
9 multiple critical situations at a few accounts," right?

10 A. Yes.

11 Q. What were you referring to there?

12 A. The largest account that I had at the time,  
13 which was also the account where I sold majority of my  
14 2017 attainment, had multiple critical situations as  
15 they -- they -- as they were implementing the solution  
16 result of previous year. The solution was not stood up  
17 and put into production until end of 2018, so for the  
18 whole year during implementation, we were just dealing  
19 with critical situations.

20 Critical situations are incidents where the  
21 customer cannot just call in 1-800 support line to get  
22 help. They are very focused incidents that generally  
23 has an assigned team working on it.

24 Q. And so it sounds like there were technical  
25 issues -- was this McKesson, by the way?

1 A. Yes, it was.

2 Q. Okay. There were technical issues at  
3 McKesson with implementing the product that had been  
4 sold to them in 2018?

5 A. In 2017. Yeah, in 2018 the problems, yes.

6 Q. Yeah, I should have said --

7 A. Yeah.

8 Q. -- the product was sold to them in 2017.  
9 There were technical issues in 2018, right?

10 A. Yes.

11 Q. Was it your job to deal with those technical  
12 issues?

13 A. As the -- the primary account rep, I -- it  
14 was my job to manage those situations.

15 Q. Were there technical people, though, who  
16 could actually do the fixing of the issue?

17 A. Yes. I would pull the technical experts in  
18 at different point in time, yes.

19 Q. Got it.

20 You go on to say "With my management team's  
21 support, I was able to neutralize some of the  
22 situations and allowed IBM to continue to compete for  
23 new business," right?

24 A. Yes.

25 Q. So you felt like you had the support of

1 your -- your management team at that point?

2 A. Yes.

3 Q. All right. Let me just pull up a few more  
4 exhibits here and then we can take a break.

5 A. Okay.

6 Q. Let me show you what will be Exhibit 42.

7 (Whereupon Exhibit 42 was marked for  
8 identification, a copy of which is attached hereto.)

9 BY MR. BARNES:

10 Q. And this is an Excel spreadsheet which  
11 hopefully will load in your browser, but let me know if  
12 you have any issues with it?

13 A. I do have the -- I do see it.

14 Q. So I'll represent to you that my  
15 understanding is this is a chart showing the  
16 performance of the various people on your team in 2018.

17 A. Okay.

18 Q. And you can see that there are -- if you look  
19 in Column O, it has the Full Year Quota.

20 You see that?

21 A. Yes.

22 Q. And then Column P is the Year to Date  
23 Achievement, right?

24 A. Yes.

25 Q. And then Column Q is the Full Year

1           Achievement Percentage, right?

2           A.    Yes.   Okay.

3           Q.    All right.   So if you look at -- Rows 2 and 3  
4           are for you, the first half of 2018 showing your  
5           primary and secondary elements.

6           You see that?

7           A.    Yes.

8           Q.    And this shows that you were about 38 percent  
9           of your primary achievement and about 71 percent of  
10          your secondary element, right?

11          A.    Yes.

12          Q.    And is that your recollection of what your  
13          achievement was for the first half of 2018?

14          A.    I can't say I remember.

15          Q.    Well, let me ask you this.

16                Do you remember hitting your quotas in 2018?

17          A.    No, I --

18          Q.    You didn't hit them in first half or second  
19          half, right?

20          A.    Not that I recall.

21          Q.    Okay.   And then Rows 12 and 13 are your  
22          primary and secondary elements for the second half of  
23          the year.   Row 12 shows about 36 percent primary.   Row  
24          13 shows about 58 percent secondary.

25                Do you remember whether those are about what

1           you achieved?

2           A.    About right. I can't -- I cannot -- yeah, I  
3 cannot remember the exact percentage or the amount.

4           Q.    That -- that's fair.

5                   I mean, these are exact numbers from several  
6 years ago, but does that sound about where you were?

7           A.    So sorry about the dog.

8           Q.    Don't worry about it. We all understand.

9           A.    I suppose so, yeah.

10          Q.    Okay. So you mentioned sort of -- the last  
11 question and then we can take a break. I wanted to ask  
12 you about the challenges in 2018 that prevented you  
13 from hitting your numbers, and you mentioned these --  
14 these technical challenges with McKesson.

15                   Were there any other challenges that come to  
16 mind that prevented you from achieving your quotas in  
17 2018?

18          A.    I think I also was assigned to, I think it  
19 was, Gap Incorporated, and I -- I picked up that -- if  
20 I recall correctly, I picked up that account in 2018  
21 only to find out that the customer had issues with our  
22 install base, so I had to deal with that.

23                   And I'm trying to remember. In 2018 I  
24 believe I also picked up Costco, and Costco, I think  
25 maybe one or two years prior to that, did buy something

1 from IBM. And when I picked up the account they were  
2 in the process of pulling them out, so I had to deal  
3 with some situations there.

4 So -- so there were a few accounts that I had  
5 in my territory at that time that were -- that had a  
6 lot of challenges which directed my focus to ensure  
7 that the customers are still happy and willing to  
8 continue to work with IBM because they were not in a  
9 position to acquire anything from IBM or they were not  
10 willing to acquire anything from IBM.

11 Q. Got it.

12 Would you agree that that happens from time  
13 to time? I mean, that's just part of sales?

14 A. Yes and no. Yes, generally you may have one  
15 critical situation that lasts for a couple of months,  
16 but in a case of McKesson, it lasted for like 11  
17 months, 10 -- over 10 months. I think I -- when I went  
18 through some of the documents, you actually saw my  
19 documentation of the critical situations that they had,  
20 so there was like a 10-month effort.

21 So -- so yes, we do run into critical  
22 situations because no product is perfect, but it's  
23 unusual to have so many critical situations for such  
24 long duration for one solution.

25 Q. Did the issues with McKesson spill over into



1           2019? Excuse me.

2           A. Yes or no. I have -- I don't recall that I  
3 have McKesson in 2019 be- -- but the issue with  
4 McKesson going from 2018 into 2019 was McKesson issue a  
5 request for proposal for Cloud and Data Center  
6 infrastructure solution, and IBM was not invited to  
7 participate.

8           So my -- my role is to sell into Data Centers  
9 on-prem only. As -- as a result, 2019, once -- so once  
10 IBM -- the bigger IBM -- because it -- it spills over  
11 into the Cloud division, right? The bigger IBM  
12 realized that we did not -- we were not invited and  
13 prevented from even participating in that RFP.

14           My understanding is we -- IBM knew that  
15 McKesson wasn't going to be a large account it once was  
16 or once had been going into 2019. McKesson did  
17 announce their partnership agreement with Google around  
18 March 2019.

19           Q. Got it.

20           And when you say "on-prem," I know what you  
21 mean, but just for the record, explain to us what you  
22 mean by "on-prem."

23           A. On-prem means equipment or -- or, you know,  
24 or systems or solutions that IBM sell that actually  
25 sits in the customer's own Data Centers. So it cannot

1 be anything that sit in a Cloud where -- whether it's  
2 IBM Cloud or Amazon Cloud. So -- so I only get revenue  
3 credit if the customers actually purchase it and  
4 install it at their location.

5 Q. Right.

6 All right. Let's go off the record.

7 (Brief recess taken.)

8 MR. BARNES: Let's go back on the record.

9 BY MR. BARNES:

10 Q. Ms. Leong, you -- you understand you're still  
11 under oath?

12 A. Yes.

13 Q. And is there anything you feel like you need  
14 to change or clarify about your testimony so far?

15 A. None that I can think of.

16 Q. Okay. Great.

17 So I want to move into 2019 now, but before  
18 we do, I want to clarify a couple of terms that I've  
19 seen. One of them is "pipeline."

20 Can you tell me what a pipeline is?

21 A. Pipeline is essentially a list of potential  
22 opportunities, accounts that you either have made a  
23 connection with or without.

24 Q. Okay. And -- and so a pipeline would  
25 essentially be a seller's view of what their potential

1 opportunities are with various clients; is that right?

2 A. Yes, with -- with different probability.

3 Q. And you -- did you keep track of that  
4 pipeline at IBM in -- in any sort of customer  
5 management system?

6 A. Yes.

7 Q. What did you use?

8 A. I used -- at that time IBM had the Sugar CRM,  
9 and I also used my own spreadsheet.

10 Q. Okay. And I believe it was your  
11 responsibility to go into the CRM and update your  
12 pipeline with various opportunities, right?

13 A. Yes.

14 Q. And one of the things you had to update was  
15 the potential size of the deal, right?

16 A. Yes.

17 Q. And you also had to update the, I'll call it,  
18 level of certainty or level of risk with a potential  
19 deal; is that right?

20 A. Yeah, yes.

21 Q. And what were the different levels of risk  
22 that IBM used?

23 A. Generally they are -- we -- we do use  
24 something slightly every year but at a high level, like  
25 identify, right, validate it, and then a couple levels

1       that whether, you know, you -- it -- and oftentimes  
2       that -- that is rep dependent, right?

3               So there's a couple levels whether you have  
4       already delivered proposal, whether you have already  
5       gotten a verbal all the way through, whether you have a  
6       PO, right, and -- and then actually be able to ship and  
7       do business.

8               So identify is sometimes really based on the  
9       research on the account, on the -- on the company,  
10      especially when it's new is, I think, right, based on  
11      my research, they have a competitor's product in store,  
12      and Michael Cosisco (phonetic) would place it, so that  
13      could be a identify but not validated because you have  
14      not made a connection with the customer yet; that,  
15      indeed, that's an opportunity.

16              Q.    Seeing the words "stretch," "key stretch,"  
17      "at risk," do you know what those mean?

18              A.    Yeah. Stretch is -- well, usually stretch is  
19      definitely opportunities that you already have  
20      validated with the customer that they may be looking  
21      for something, right, in the time frame that IBM -- our  
22      commission period, right? And also -- so -- so that's  
23      stretch.

24              Key stretch is -- and it's also, you know,  
25      base -- is also rep depen- -- dependent, right? Where

1 key stretch generally means to me -- meant to me was  
2 customer -- the customer has not confirmed a buy from  
3 anybody, but they are definitely looking for a  
4 solution, right?

5 But then also time frame may or may not be in  
6 the same commission period that we are -- we are  
7 working towards, so those are usually key stretch,  
8 right, because you already have confirmation that the  
9 customer is, indeed, looking for a solution from  
10 somebody.

11 Q. And -- and what does "at risk" mean?

12 A. At risk is usually you have gone all the way  
13 through to delivering a proposal, and at a technical  
14 level the customer said, "Yeah, you know, this is a  
15 sound solution" and with -- shown interest of the -- of  
16 the IBM solution.

17 So you essentially call that -- it's like a  
18 call -- you know, calling a bet or something, right,  
19 that, you know, there's a good chance of my closing it,  
20 but it's not firm because you have not gotten any  
21 purchase order or, right, anything like that from the  
22 client, from the customer yet.

23 Q. Got it.

24 So -- so stretch is the least certain, key  
25 stretch is a little more certain, and at risk is more

1           certain than that?

2           A.    Yes.

3           Q.    Is that right?

4           A.    That's right, yeah.

5           Q.    I wanted to make sure I got them in the right  
6           order.

7           A.    Yes.

8           Q.    Okay.  So moving into 2019, Amy Buyarski  
9           continued to be your first line manager at the start of  
10          2019, right?

11          A.    I think she was acting at the start because  
12          my understanding was that she relinquished her role as  
13          the first line, but because we didn't -- the team did  
14          not have a first line, so she was acting like an  
15          interim until Todd could hire someone.

16          Q.    And eventually Sandra Florey became your  
17          first line manager in July of 2019; is that right?

18          A.    Yes, something like that, yeah.  I --

19          Q.    So roughly Amy was your acting manager first  
20          half of '19, and Sandra was your official manager  
21          second half of '19?

22          A.    That's how I recall it, yeah.

23          Q.    Okay.  What was your impression of Ms. Florey  
24          as a manager?

25          A.    She was a good manager.  She was very

1        analytical. She was also very -- she's collaborative,  
2        yeah.

3            Q. Did you feel like Ms. Florey supported you in  
4        your role?

5            A. To the best that she could, because we both  
6        learned about our roles eventually, my -- my role  
7        eventually, yeah.

8            Q. And Todd Stacy, we mentioned, became your  
9        second line manager at the beginning of 2019; was that  
10       right?

11          A. That's what I recall, yeah, yes.

12          Q. And he remained your second line manager  
13       until your termination; is that right?

14          A. Yes.

15          Q. What was your impression of Todd as a  
16       manager?

17          A. He's very -- my impression of him at that  
18       point is he was very focused on large deals and closing  
19       them at that minute, yeah.

20          Q. Do you -- do you think that was a bad thing?

21          A. In general, not, especially if you were  
22       working on one of those large deals.

23          Q. Was -- do you think that Todd was a good  
24       manager?

25          A. I don't know how to answer that. That --

1       that -- like, it's -- it's very hard to define good or  
2       not good.

3           Q.    Do you feel like Todd supported you in your  
4       role?

5           A.    I didn't think so at that time.

6           Q.    Why not?

7           A.    Because my territories did not have very  
8       large deals because they are not large customers.

9           Q.    And you felt like he was only focused on the  
10      large deals on the -- on the team?

11          A.    That's -- just judging my -- judge -- you  
12      know, based on my recollection on team calls, meaning  
13      not -- usually not even just, you know, my immediate,  
14      but including, you know, everyone who reported up to  
15      Todd, the focus was usually just on the large deals.

16          Q.    Speaking of -- of meetings, did -- did you  
17      ever have any in-person meetings with Todd?

18          A.    I had -- I believe I met him when we were  
19      preparing for a -- when I was helping to prepare him  
20      for a sales call to Costco early in the year, and then  
21      we had a kickoff meeting for his entire team sometime  
22      July, second half 2019.

23          Q.    An in-person kickoff meeting?

24          A.    Yes, an in-person kickoff meeting, yes.

25          Q.    Were most of your meetings by telephone or by



1 video with -- with Todd?

2 A. By telephone, yes.

3 Q. What about with Amy and with Sandra? Were  
4 most of your meetings with them by video or telephone?

5 A. By telephone, yes.

6 Q. And eventually in 2019 -- I mean in 2020  
7 Robert Cortez became your first line manager, right?

8 A. Yes.

9 Q. Did you have -- were most of your meetings  
10 with Robert by video or telephone?

11 A. It was always by telephone.

12 Q. What was your impression of Robert as a  
13 manager?

14 A. I -- I can't -- I mean, he was only my  
15 manager for a very short period of time, so I can't say  
16 I have a really good -- I mean, a complete assessment  
17 of how he was because I was -- yeah, I was conducting  
18 the sales activities that, you know, that as a  
19 teammate, you know, we all agreed on -- on, right, the  
20 best approach. So I cannot really say whether, you  
21 know, what -- I don't have a -- an assessment of him as  
22 good or not good.

23 Q. Okay. That's fair.

24 A. Yeah.

25 Q. Do you know whether any of these managers,

1 Todd, Sandra, Amy, or Robert, whether any of them knew  
2 how old you were?

3 A. Oh, yes, I do know they knew how old I was.

4 Q. How do you know that?

5 A. Because my 35th anniversary was announced to  
6 a lot of people, yeah.

7 Q. So they knew you had been with the company  
8 for 35 years, but do you know whether they knew how old  
9 you were?

10 A. I think -- this is my -- right? I think they  
11 have an idea they -- they knew that I went to college.

12 Q. And then that you had been with the company  
13 for 35 years?

14 A. Exactly, yes.

15 Q. How old were you in relation to the other  
16 sellers on your team?

17 A. Judging from the experience that I've heard  
18 from them, I thought we were about the same age. Maybe  
19 a couple of them maybe have more experience than I do.

20 Q. Got it.

21 Were you ever -- going back to Todd Stacy,  
22 were you ever interviewed by Human Resources related to  
23 Todd or any of the complaints about Todd?

24 A. Yes, I -- yes.

25 Q. When was that?

1 A. Now I cannot remember.

2 Q. Was it 2019 or 2020?

3 A. I believe it was -- I -- I recall -- well, at  
4 least I recall -- I think I recall it was 2019.

5 Q. Okay.

6 A. Yeah.

7 Q. Do you know why you were being interviewed?

8 A. So I -- I received, I cannot remember,  
9 whether a phone call or email from Human Resources  
10 asking to set up a time to talk with me. I didn't know  
11 what that was. And when the Human Resource person came  
12 on, she said just, "I just want to let you know that  
13 the reason we're interviewing you, because you are one  
14 of the senior members on his team, so we value your  
15 feedback on the complaint that has -- that is out there  
16 against Todd."

17 Q. But -- but you don't know what that complaint  
18 was?

19 A. The only thing that I heard from the  
20 Human Resource person is about Todd's conduct in  
21 meetings and -- and -- and -- yeah, in -- in  
22 interaction with other employees. I think that's  
23 the -- that was the very summarized, you know, reason  
24 that -- that I was given, yeah.

25 Q. Who interviewed you?

1           A.    I cannot remember her name.

2           Q.    Do you recall what you told that person about  
3   Todd?

4           A.    I -- I recall -- I seem to recall what I told  
5   him was my observation of Todd was also usually in a  
6   big meeting, right? I did not have a lot of  
7   one-on-ones with him because I -- I -- you know, I --  
8   my accounts were not the bigger accounts.

9                    So my observation with him was I did not  
10   notice that he was confrontational or anything like  
11   that, and I think I might have said that, you know,  
12   I -- I'm not sure I can -- I said, "Todd is an intense  
13   person, and partly because he's passionate about  
14   selling, so it -- I can vouch for how he conducted in  
15   other settings, but I did not observe anything."

16                   I think that's what I said about Todd because  
17   I really did not have a whole lot of one-on-one  
18   interaction with Todd to -- to warrant my experience  
19   or -- or observation or further observation.

20           Q.    Got it.

21                   Okay. Going back to the 2019 performance,  
22   let me show you -- first, let's take a look at  
23   Exhibit 44, which is another Excel spreadsheet.

24           A.    Okay.

25                   (Whereupon Exhibit 44 was marked for

1 identification, a copy of which is attached hereto.)

2 BY MR. BARNES:

3 Q. And there's two tabs, one for first half of  
4 '19, one for second half of '19. I want to look at the  
5 first half of '19 first.

6 A. Okay.

7 Q. So similar to the other spreadsheet we looked  
8 at, Column O shows the Quota, right?

9 A. Okay. Please bear with me. Let me scroll.

10 Q. Oh, sure.

11 A. Yeah, mine shows up at the bottom corner.

12 Okay.

13 Q. Yeah, you may need to scroll up and over.

14 A. Yeah.

15 Q. So Column O shows the Full Year Quota, right,  
16 or I guess the Quota for the first half of '19, right?

17 A. Yes.

18 Q. Column P shows the -- the Achievement for  
19 Each Person, right?

20 A. Yes.

21 Q. And then Column Q shows the Percentage  
22 Attainment, right?

23 A. Okay. Okay. Yes.

24 Q. And then if you look at Lines 2 and 3 on the  
25 first half-tab, and it shows that you got about 42 and

1 a half percent of your primary element and about  
2 30 percent of your secondary element in the first half  
3 of 2019.

4 This is what it shows here, right?

5 A. Line 2?

6 Q. Lines 2 and 3.

7 A. My Line 3 says it's Don.

8 Q. Says what?

9 A. Says it's Don. The employee name is  
10 Don Custardo.

11 Q. Oh, I'm looking at the first half. There's  
12 two tabs.

13 A. Oh, sorry, yes.

14 Q. No, that's okay. That's okay.

15 So on the first half of '19 tab, you should  
16 be at Lines 2 and 3.

17 A. Okay.

18 Q. Do you see that?

19 A. Yes.

20 Q. Okay. And Line 2 shows about 30 percent  
21 achievement on your secondary, and Line 3 shows about  
22 42 and a half percent achievement on your primary,  
23 right?

24 A. Yes.

25 Q. Is that your recollection of about what your

1 achievement was in the first half of '19?

2 A. I cannot remember the exact number, but I do  
3 remember that I did not meet my quota.

4 Q. Okay. What -- what challenges did you face  
5 in the first half of '19 that kept you from hitting  
6 your quota?

7 A. So there were a couple of large accounts,  
8 like McKesson and Costco, that I had in 2018. But then  
9 in -- if I recall correctly, in first half of 2019 they  
10 were not officially assigned to me, but I had to work  
11 it because there was -- well, definitely no one was  
12 working McKesson, so I had to cover the account like I  
13 were -- I was the sales rep.

14 And then Costco was transitioned to  
15 Coberen Brock, I think. Yeah, I remember it was  
16 Coberen. He was new to IBM, so I had to work with him  
17 for quite a few months to transition him, going to meet  
18 with customers up in Issaquah, Washington, you know,  
19 quite a few times.

20 So I would have to say that hindsight 20/20,  
21 maybe I shouldn't have worked on those -- helped with  
22 those accounts that much, but they were large IBM  
23 accounts, so -- and I had them the previous year and I  
24 wanted to not lose that momentum for -- on behalf of  
25 IBM.

1 Q. And so you don't know if those accounts were  
2 officially --

3 A. I know they were not, right. They were not  
4 assigned to me, but McKesson, there was no rep assigned  
5 to it, so I -- I covered it. I had to cover the  
6 account partly because there was no one covering it and  
7 partly because the customer -- it was announced to the  
8 customer that I was no longer a rep and the customers  
9 continued to call me, and then my manager asked me to  
10 just continue to support them.

11 Q. Who assigned your accounts in 2019?

12 A. At the beginning of the year, I believe -- so  
13 Amy helped, right, because there was no first line  
14 manager, if I remember correctly, so Amy was the  
15 interim, and so she helped all the account assignment  
16 and -- and, you know, and then gave it to Todd to  
17 decide.

18 Q. Okay. All right. Let's look at the 2H 2019  
19 tab.

20 A. Okay.

21 Q. And this one you were Line 2.

22 A. Yes.

23 Q. It shows quota of 2 and a half million,  
24 achievement of about 427 and a half thousand, and  
25 percentage achievement of about 17 percent, right?



1 A. Yes.

2 Q. And is that your recollection of what your  
3 achievement was in the second half of 2019?

4 A. Same. I don't recall the exact number, but I  
5 do recall that I did not hit my number.

6 Q. And in the second half of 2019, you were in  
7 what's called a -- a DES Hunter role, right?

8 A. Yes.

9 Q. Was anybody else on your team in that  
10 DES Hunter role?

11 A. No, not on my immediate team, no.

12 Q. Were any of the people listed on this 2H 2019  
13 tab in that role?

14 A. I don't believe so. I don't think so, no.

15 Q. What was the DES Hunter role?

16 A. I think they were created in second half of  
17 2019 to focus on the software portion of the IBM  
18 storage solutions and -- and only a subset of the --  
19 the software portfolio. The reason for that, my  
20 understanding is IBM believed at that time that subset  
21 of software solution, we have -- we might have  
22 competitive edge that we could potentially go out there  
23 to displace our competitors, strictly from a software  
24 perspective.

25 Q. Okay. Do you know why you were chosen for

1           that role?

2           A.    No, I don't.

3           Q.    Do you know who chose you for that role?

4           A.    No, I don't.

5           Q.    So if you would look at what I've pulled up  
6 as Exhibit 7.

7           A.    Okay.

8           Q.    And it's 7 because we marked it in a prior  
9 deposition as Exhibit 7.

10          A.    Oh, okay. That's fine.

11          Q.    And this is an email from Sandy Florey to  
12 Ginni, Laura, you, Dan, Don, and Robert, right?

13          A.    Okay. Yes.

14          Q.    And it's dated November 1, 2019, right?

15          A.    Yes.

16          Q.    And it says "As most of you know, the  
17 Distributed Enterprise Storage DES Hunter role, filled  
18 by Nelly and Don on our team, was put in place in July  
19 of this year to drive more business in the  
20 distributed/competitive space."

21                Did I read that correctly?

22          A.    Yes.

23          Q.    Okay. So this suggests that Don Custardo was  
24 also in that role, right?

25          A.    Yes.

1           Q.   And does -- so does this refresh your  
2           recollection about whether anyone else on your team was  
3           in that role?

4           A.   No, because otherwise Don and I would have  
5           strategized more.

6           Q.   So do you know whether Don was in that role  
7           or not?

8           A.   I don't recall.

9           Q.   Okay.

10          A.   Yeah.

11          Q.   Now let me ask you to take a look at  
12          Exhibit 8 --

13          A.   Okay.

14          Q.   -- which is a slide that describes the  
15          DES Hunter role, and I just want to ask you to take a  
16          look at it and let me know if that's consistent with  
17          your understanding of what the role was.

18          A.   For the most part.

19          Q.   Okay. Is there anything in here that stands  
20          out as -- as inaccurate to you?

21          A.   First off, I don't recall receiving this,  
22          so -- so sorry that I took a while to read it --

23          Q.   No, that's okay.

24          A.   -- or receiving this when I was assigned this  
25          role.

1           So one is, I didn't have a -- I didn't have  
2       12 to 15 accounts, not that I recall. The other that  
3       stands out is -- is -- I think there was one bullet  
4       that says, you know -- oh, "DES Hunters are not  
5       overlay."

6           That -- so my understanding of overlay  
7       with -- with IBM throughout the years is you're overlay  
8       when you're not the primary seller, whatever the  
9       product line is on the account, right? And DES are  
10      never the primary. So you may go in and do your best  
11      to sell a solution, but you're not the primary seller,  
12      so -- so that's one thing that maybe -- my definition  
13      is I was an overlay, my understanding also.

14           The other thing is -- is, I wasn't free to  
15      hunt, because while I am responsible to set a strategy,  
16      my strategy has to support the primary seller's  
17      strategy because I could not create a strategy that may  
18      jeopardize any relationship, any potential  
19      opportunities. So essentially the left hand has to be  
20      working with the right hand or with -- I wasn't  
21      hunting.

22           Q.    So were you allowed to call on accounts  
23      directly?

24           A.    I am allowed after having kind of strategy  
25      planning sessions with the primary seller that the

1 areas that -- at least for me, right, the areas that I  
2 could go focus on because -- first, if it fits within  
3 my portfolio, right, and then IBM has no penetration  
4 there.

5 And then also it is distinct enough that I  
6 can go call on without confusing the -- the customer  
7 because, you know, typically you don't want to have  
8 multiple people calling on the customers for multiple  
9 things, right? You want to have IBM, we call it,  
10 single flow-to chart, so you try to have a same -- the  
11 primary one-on-one type of relationship built.

12 So when I was, you know, under, you know,  
13 careful planning with the primary rep, right, then I  
14 would get, okay, these are the customers I don't call  
15 into and this is an area that we have no install base,  
16 and -- and it -- it is distinct enough that, you know,  
17 you can go there, that kind of arrangement.

18 Q. And was that the same for all of the  
19 DES Hunters?

20 A. That, I would not know.

21 Q. What about overlay distinction you mentioned  
22 earlier? Was that the same for all DES Hunters?

23 A. I would think that people who have been with  
24 IBM for, you know, a few years, that would be their  
25 understanding.

1 Q. Did -- how many DES Hunters were there? Do  
2 you know?

3 A. I don't.

4 Q. Did your accounts change when you became a  
5 DES Hunter?

6 A. Yes, completely.

7 Q. Are you sure about that?

8 A. Well, there might have been one or two that  
9 I -- I had them before, but I'm no longer their primary  
10 storage rep.

11 Q. Was McKesson still one of your accounts when  
12 you were a DES Hunter?

13 A. No.

14 Q. All right. Let me pull up a document here.  
15 Give me one second.

16 A. Okay.

17 Q. Actually, I'll -- I'll circle back to that.

18 A. Okay.

19 Q. In the interest of time, we can circle back  
20 to that piece.

21 A. Okay.

22 Q. So are there any other ways other than what  
23 you've mentioned to us how your job duties changed when  
24 you became the DES Hunter?

25 A. What do you mean by that?

1 Q. Well --

2 A. Siri thinks that I was asking her a question.

3 Sorry.

4 Q. No, that's okay.

5 You mentioned that you were no longer the  
6 primary --

7 A. Correct.

8 Q. -- when you were a DES Hunter, right?

9 A. Yes.

10 Q. How did your job duties change as a result of  
11 that?

12 A. You -- I suppose the difference is you are  
13 not the -- I was no longer responsible the -- for the  
14 account relationship, right, you know, the general  
15 coverage. So my understanding of the job was it's  
16 almost like there's a fire. You go in, you put out the  
17 fire, and then you go out, that -- that kind of  
18 arrangement, and then -- then you kind of strategize  
19 with another primary seller whether there could be a  
20 potential fire that you can go fight.

21 Q. Okay. Do you think the DES Hunter role  
22 required a different skillset than your prior role?

23 A. Not a different skillset but a different  
24 account coverage mile.

25 Q. What do you mean by that?

1           A.     So when -- before there were DES, right, we  
2     always -- we always just had one storage seller on an  
3     account, and the storage seller would know when to  
4     engage in SME. Usually those are folks from the  
5     development labs, right, to prep for the opportunity so  
6     you know how to orchestrate all the activities that  
7     need to happen at the account to make sure that you can  
8     balance the opportunities and also, right, handle all  
9     the customer relationships.

10           With a DES, you're assigned to the account,  
11     but not as a primary, and if I were to call in an SME  
12     and my -- my cadence, right? So for instance, my  
13     cadence, I need to have a cadence with the primary  
14     storage rep, right? So a cadence is kind of like a  
15     weekly, you know, opportunity review. So -- so that  
16     coverage model is different because I was told that I  
17     was free to go hunt, but I wasn't.

18           Like, I'll give you an example. At one of  
19     the accounts, right, I was told to go work on a  
20     replacement opportunity, but then there was a mainframe  
21     opportunity that is going up and down and there's other  
22     tapes that will support the mainframe in Rymon  
23     (phonetic).

24           So maybe after a couple of weeks, you know, I  
25     was advised to pause, right, on my -- on my activities



1           because IBM could not jeopardize the mainframe  
2           opportunity because mainframe usually is large deals --  
3           large deals. So, you know, that's kind of -- you know,  
4           so when you have to -- the -- the coverage model is a  
5           little bit -- was a little bit confusing, right?

6           Q.    Okay.

7           A.    Yeah.

8           Q.    I think I'm following you there.

9           A.    Yeah.

10          Q.    And -- and DES stands for Distributed  
11          Enterprise Storage; is that right?

12          A.    Yes.

13          Q.    Was that a particular type of product or set  
14          of products at IBM?

15          A.    Just a subset of the storage portfolio, yeah.  
16          And -- and I was wrong that it did have the flash  
17          system only because the soft- -- the software that we  
18          had on bundle to sell as a software solution is already  
19          embedded in the flash storage.

20                So for that particular hardware set, IBM did  
21          not -- could not unbundle it, so we were allowed to  
22          sell the flash system because it has the software  
23          solution embedded.

24          Q.    Okay.

25          A.    Does that make sense?

1 Q. Yeah, I see what you're saying.

2 A. But we could still also sell that software,  
3 right, by itself, so it's a software solution that we  
4 could sell -- I could sell by itself. But because it's  
5 embedded into the flash hardware, so I could sell that  
6 whole thing because the software was embedded.

7 Q. Yeah.

8 A. Yeah.

9 Q. So -- so when you took on this DES Hunter  
10 role, someone -- who took over your -- the  
11 responsibilities you had been performing in the first  
12 half of 2019?

13 A. They were just assigned to everyone else. I  
14 don't -- let's see.

15 Q. Just split up among the teams?

16 A. Yeah, just split up among the teams, yeah. I  
17 think McKesson might have gone to someone new at IBM,  
18 Ginni, but I think she's -- so yeah, they were just  
19 split up to the -- to my team. And -- and I believe  
20 there might have been a handful that IBM deemed to be  
21 lost cause. We just didn't assign anyone to cover  
22 them.

23 Q. Got it.

24 You said you think it went to Ginni?

25 A. Ginni, yeah, Ginni Roth, I think, Virginia,

1 Virginia Roth. I think McKesson went to her.

2 Q. How -- do you know how old Ginni is?

3 A. I don't. I mean, like I said, you know, we  
4 have training and experience. I think she had worked  
5 with -- worked for EMC or different places, so we -- we  
6 thought we were about the same age, yeah.

7 Q. Got it.

8 A. At least I thought we were the same age,  
9 yeah.

10 Q. Got it.

11 A. Yeah, around there.

12 Q. Did you agree with the move to the DES Hunter  
13 role?

14 A. Yes. I mean, Pat asked me, right, and he  
15 said, "Nelly, you've got to do this. You're the best I  
16 have."

17 I said, "Okay." I'm always a team player, so  
18 if -- you know, if Todd needed someone to fill the  
19 position, I wasn't going to say, "Oh, no. You know, go  
20 find someone else," especially, you know, I didn't -- I  
21 didn't know much about what a DES would be doing, but I  
22 just look at that as a challenge, right, you know, to  
23 continue to grow my career, right?

24 Q. Got it.

25 Do you know whether others performed well in

1 the DES Hunter roles, other DES Hunters?

2 A. When I started joining the bigger DES  
3 team calls later on in the year, I heard that a lot  
4 were struggling for similar reasons that I had. And  
5 also I recall that there were a lot of people  
6 complaining about that subset of portfolio, because  
7 sometimes when you go out to sell solution, right --  
8 for instance, if you go out and sell, you know,  
9 something, then you don't back it up, right, such as  
10 something, a backup solution, then you're not doing the  
11 customer the full service. But we didn't have certain  
12 things in our portfolio, so -- so I did hear others,  
13 yeah, struggling too.

14 Q. Do you think that the DES Hunter program was  
15 flawed from the start?

16 A. I think it was not -- my -- this is my  
17 opinion. I don't think it was well thought out, right?  
18 And it might have been executed too prematurely.

19 I know I, along with other DES, have provided  
20 a lot of feedback and suggestions back to -- you know,  
21 to -- to the program to alter it, to change it up. So  
22 yeah, I --

23 Q. Do you think that -- well, let me ask you,  
24 who created the program? Do you know?

25 A. That, I don't know.

1 Q. Do you think that the program was created  
2 intentionally to fail?

3 A. I don't believe so.

4 Q. Presumably they were hoping it would result  
5 in a lot more revenue, right?

6 MR. WILLIAMS: Objection to the form.

7 You can answer.

8 THE WITNESS: I don't know what the intention was  
9 since I -- you know, I don't know who created it.

10 BY MR. BARNES:

11 Q. That's fair. That's fair.

12 But you don't have any reason to believe that  
13 the program was just set up to fail intentionally from  
14 the start, do you?

15 A. In my opinion, I would hope not.

16 Q. Okay. I just introduced Exhibit 45. If you  
17 could take a look at it.

18 A. Yeah.

19 (Whereupon Exhibit 45 was marked for  
20 identification, a copy of which is attached hereto.)

21 BY MR. BARNES:

22 Q. This is an email from Amy to Laura Cook.

23 Who's Laura Cook?

24 A. Laura Cook was one of the primary storage  
25 reps.

1 Q. Okay. And so this email from Amy to Laura is  
2 dated July 18, 2019, right?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes, that's what I'm reading too, yes.

6 Q. And the subject says "Nelly DES rep coverage  
7 account list," right?

8 A. Oh, no. I'm sorry. Laura Cook. Laura Cook.  
9 Who is Laura Cook? I was thinking about a -- my peer  
10 who was also Laura. I have a peer who was Laura, but  
11 then she left IBM. That's Laura somebody else, not  
12 Laura Cook. Laura Cook, I think, was an executive.

13 Q. It's fine if you don't know.

14 A. Yeah, I don't know.

15 Q. Okay.

16 A. The name just sounds familiar.

17 Q. Sure.

18 A. Yeah.

19 Q. The subject of the email is "Nelly DES rep  
20 coverage account list," right?

21 A. Yes.

22 Q. And it lists a number of accounts here, and  
23 I'm -- are these the accounts that you had while you  
24 were a DES Hunter?

25 A. No. I think that was changed also. This --

1       this list was changed because I know I did not have --  
2       I'm trying to remember. I -- I -- it's not the same  
3       list.

4             Q.    Do you know which of these accounts you did  
5       have when you were a DES Hunter?

6             A.    I remember American Airlines. I remember  
7       Pepsico, JC Penney, Arrow Electronics, Avnet, Nestle,  
8       Station Casinos. I might have Shutterfly too.

9             Q.    But you don't think you had McKesson?

10            A.    I don't remember if I had McKesson, because I  
11       know I wasn't a primary rep. If -- I cannot remember.  
12       I -- you know, I -- they might have left McKesson on my  
13       account list because I have to maintain continuity.  
14       And I believe because there's a new rep on McKesson, I  
15       cannot -- I think it was Ginni who got assigned to --  
16       to McKesson.

17                    So they were trying to maintain continuity so  
18       that my name is still, you know, seen by the -- by the  
19       customers, right? "Oh, she's still on the account,  
20       right?" So I think I -- I might still have McKesson.  
21       I'm sorry. I had this account for so long, all the  
22       years kind of, like, all mesh together.

23             Q.    So you don't -- you don't know whether you  
24       still had McKesson when you were a DES Hunter?

25             A.    I don't remember whether I still -- I -- I --

1 I must have it, but it wasn't -- but it -- it was an  
2 account that the primary asked to be involved because I  
3 had very little interaction with them. I think the  
4 only thing that I had -- I did with McKesson towards  
5 the end of 2019 was I might have talked to the CIO or  
6 something, and that's it.

7 Q. So did you have any opportunities at McKesson  
8 when you were a DES Hunter?

9 A. That I was supposed to, like, act as a DES --

10 Q. Right.

11 A. -- person?

12 Yeah, no, I did not.

13 Q. All right. Let me show you the next exhibit.

14 A. Okay.

15 Q. Let's do it this way. We're going to have to  
16 go through a couple of steps here because I've got the  
17 emails and then the attachments to the emails.

18 A. Okay.

19 Q. So we'll start with Exhibit 46 --

20 A. Okay.

21 Q. -- which is an email from Philip Weed.

22 A. Uh-huh.

23 (Whereupon Exhibit 46 was marked for  
24 identification, a copy of which is attached hereto.)

25 ///



1 BY MR. BARNES:

2 Q. Who's Philip Weed?

3 A. I learned that he was managing the DES team.  
4 Like -- so the DES is supposed to still report to the  
5 storage sales manager, but he's almost -- he's almost  
6 like a program manager, right?

7 Q. Like a dotted line?

8 A. Dotted line, yes, yeah.

9 Q. Got it.

10 And so in this email he is saying -- you see  
11 he says "Many of the opportunities listed within your  
12 market's pipeline that show up under either your DES  
13 Sales Hunter or DES CTS Hunter are opportunities from  
14 their previous roles and are not products that the team  
15 currently sells."

16 Do you see that?

17 A. Uh-huh.

18 Q. And then attached to it, if you scroll  
19 down --

20 A. Okay.

21 Q. -- you can see right above the signature line  
22 there's a -- an attachment called "DES Hunter Pipeline  
23 Road Map."

24 A. Okay.

25 Q. Do you see that?

1 A. Uh-huh.

2 Q. "As of 9/12/19."

3 You see that?

4 A. Yes.

5 Q. Okay. So now I'm going to introduce that  
6 attachment --

7 A. Okay.

8 Q. -- which is an Excel spreadsheet.

9 (Whereupon Exhibit 47 was marked for  
10 identification, a copy of which is attached hereto.)

11 BY MR. BARNES:

12 Q. You should be able to see it now.

13 A. Is that 47, Exhibit 47?

14 Q. Yes, it is.

15 A. Okay.

16 Q. And there's two tabs. There's a 3Q Pipeline  
17 and a 4Q Pipeline.

18 A. Uh-huh.

19 Q. And if you go to the 3Q Pipeline tab in  
20 Row 90, let me know when you're there.

21 A. Yes, I'm there.

22 Q. Row 90 through -- 90 through 93 are listed as  
23 you're the opportunity owner and the customer is  
24 McKesson.

25 A. Yes.

1 Q. So were these DES opportunities or were these  
2 left over from your prior role?

3 A. They were left over from my prior role. I  
4 think that's how I read it from Phil's too --

5 Q. Okay.

6 A. -- the email, yeah.

7 Q. So if you go to Column P.

8 A. P. Okay.

9 Q. The opportunity name for these opportunities  
10 is MMS JDE upgrade.

11 A. Uh-huh.

12 Q. What does that mean?

13 A. Oh, MMS is McKesson Medical Solutions. This  
14 is -- this is one of the divisions that sell to  
15 hospitals, clinics, you know.

16 Q. Okay.

17 A. Yes, they -- McKesson's a medical equipment  
18 supply distributor.

19 Q. Yeah.

20 A. So this particular division, they sell to  
21 hospitals and clinics. And JDE is -- is a software  
22 package, JD Edwards --

23 Q. Okay.

24 A. -- that Oracle owns, I believe, yeah.

25 Q. And then if you go to Column AA for Brand

1 Code Description --

2 A. Uh-huh.

3 Q. -- it says -- for these opportunities which  
4 are Lines 90 through 93, it says "System Storage  
5 Hardware," "Flash Systems," "System Storage Hardware,"  
6 and "System Storage Hardware."

7 Are those DES products?

8 A. I would have to -- so the first one, if you  
9 look at AC, that says "Switch," that is --

10 Q. Yeah.

11 A. -- a -- that either could be a bouquet -- or  
12 not bouquet -- yeah, Cisco (phonetic) or (inaudible),  
13 that's not. The second one, Flash System, that is the  
14 system that has the embedded software.

15 Q. So is that DES?

16 A. Potentially, yes. Yes, I believe that is.  
17 The next two, I don't believe so. Maybe -- hold on.  
18 93 maybe. It's a virtualized software.

19 Q. Okay. So some of these opportunities might  
20 be DES, but some of them are not.

21 Is that what you're saying?

22 A. Right, yes.

23 Q. Did you sell anything, any DES products to  
24 McKesson in second half of 2019?

25 A. I believe we got some flash.

1 Q. Okay.

2 A. So I was in a support role to the primary  
3 rep.

4 Q. Okay. So you did have some DES opportunities  
5 with McKesson in the second half of '19?

6 A. I -- I think it's second half of '19. I -- I  
7 can't remember whether -- I can't remember whether I  
8 had McKesson on my DES road map -- I mean territory,  
9 but if I had, I knew that we -- we closed the -- "we,"  
10 meaning IBM, closed a few flash storage out there.

11 Q. Okay. And I assume you would not be able to  
12 tell on this exhibit for other reps which were and were  
13 not real DES opportunities?

14 A. No, I cannot. And as a matter of fact, I  
15 never got this.

16 Q. Okay.

17 A. Yeah, I -- I did not even knew Phil existed  
18 until maybe, like, October time frame or November time  
19 frame.

20 Q. Got it.

21 All right. Let's take a look at the next  
22 exhibit, which is Exhibit 48.

23 A. Okay.

24 (Whereupon Exhibit 48 was marked for  
25 identification, a copy of which is attached hereto.)

1 THE WITNESS: Okay.

2 BY MR. BARNES:

3 Q. This is another email from Philip Weed dated  
4 December 9, 2019, right?

5 A. Uh-huh.

6 Q. Yes?

7 A. Yes. Yes. Sorry.

8 Q. No, that's okay. I'm not trying to be rude.  
9 I'm just trying to --

10 A. No, no. I forgot to say -- not "uh-huh." I  
11 was too busy reading.

12 Q. It looks like you were copied on this email,  
13 if you look.

14 A. Yes, I see my name there, yes.

15 Q. And he says "Team, this will be our last call  
16 for 2019," right?

17 A. Yes.

18 Q. Did -- were you having periodic calls with  
19 the DES Hunter team to talk about the -- the progress  
20 and how people were doing?

21 A. Yes. Once I got connected to it, yes.

22 Q. That role went away at the end of 2019,  
23 right?

24 A. Yes.

25 Q. Do you know why it went away?

1           A.    I -- I -- I don't know the specific reason.  
2           I only heard rumors.

3           Q.    What did you hear?

4           A.    It was not successful.

5           Q.    Did you have a sense whether any of the  
6           hunters were successful in their role, if you know?

7           A.    I don't know.

8           Q.    Okay.

9           A.    I don't know.

10          Q.    Okay. You see that he has attached to this  
11          email something called the DES Hunter Pipeline Road Map  
12          as of 12/5/19.

13                You see that?

14          A.    12/5/19. Okay. Let me -- yes, uh-huh.

15          Q.    Okay. So I am going to attach or -- or  
16          introduce that attachment as Exhibit 49 --

17          A.    Okay.

18          Q.    -- which is -- okay.

19                (Whereupon Exhibit 49 was marked for  
20          identification, a copy of which is attached hereto.)

21          BY MR. BARNES:

22          Q.    You should be able to see it now.

23          A.    Okay.

24          Q.    So you did receive this attachment, right?

25          A.    Yes.

1 Are we looking at 4Q or 1Q?

2 Q. Let's look at 4Q.

3 A. Uh-huh.

4 Q. There are for you -- oops.

5 Do you -- did you have any opportunities in  
6 the fourth quarter that you recall?

7 A. Yeah. Yeah, I have identified  
8 opportunities --

9 Q. Yeah.

10 A. -- American Airlines, Costco, Amazon.

11 Q. And you've also got some more McKesson on  
12 here, right?

13 A. On 4Q?

14 Q. Yes.

15 A. Oh, okay. Now I --

16 Q. If you look at Lines 94 and 95.

17 A. Yeah, my apologies. I was looking at 1Q. I  
18 thought I changed the tab, but --

19 Q. That's okay.

20 A. Yeah.

21 Q. So do you see Lines 94 and 95 on 4Q?

22 A. Yes. Yes.

23 Q. So those are more opportunities for McKesson,  
24 right?

25 A. Yes. So I did have McKesson.



1 Q. You still had -- you still had some  
2 opportunities for McKesson in -- in 4Q --

3 A. Yes.

4 Q. -- of 2019?

5 A. Yes.

6 Q. And then to your point, you also had some  
7 opportunities in 1Q of 2020 for American Airlines and a  
8 couple of other clients, right?

9 A. Right. They -- they -- early in the sale  
10 cycle, yeah.

11 Q. Do you know whether those ever closed?

12 A. That, I don't know.

13 Q. Okay.

14 A. I can -- I can tell you that Costco, Amazon,  
15 they were never closed.

16 Q. Okay. Okay. So it does -- it does look like  
17 you still had McKesson in the second half of 2019.

18 A. Yes, that looks right, yes. Thank you.

19 Q. So if we go back to Exhibit 44.

20 A. 44. Okay.

21 Q. And you look at the -- this is the 2019  
22 achievement results for your team. If you look at the  
23 2H 2019 tab.

24 A. Uh-huh.

25 Q. We already looked at you. You're -- you're

1 Line 2, right?

2 A. Yes.

3 Q. And then Line 3 is Don Custardo, right?

4 A. Yes.

5 Q. And it looks like he -- his achievement was  
6 about \$2.3 million.

7 You see that?

8 A. I see that, yes.

9 Q. And you said you don't know whether he was a  
10 DES Hunter or not?

11 A. I -- I do not recall, but then, you know, it  
12 says he is here, yes. Oh, well, I -- I guess he is.  
13 I -- I don't know. I cannot tell from this  
14 spreadsheet.

15 Q. Okay. That's fair.

16 A. Yeah.

17 MR. BARNES: All right. Let's go off the record.

18 THE WITNESS: Okay.

19 (Lunch recess taken.)

20 MR. BARNES: We are back on the record after a  
21 short lunch break.

22 BY MR. BARNES:

23 Q. Ms. Leong, you understand you're still under  
24 oath?

25 A. Yes.

1 Q. And is there anything you want to change or  
2 clarify about your testimony so far?

3 A. Nothing that I can think of, no.

4 Q. Okay. Great.

5 So let me ask you to take a look at  
6 Exhibit 50, please.

7 A. 50. Okay.

8 Q. Yes.

9 (Whereupon Exhibit 50 was marked for  
10 identification, a copy of which is attached hereto.)

11 BY MR. BARNES:

12 Q. And I apologize again for jumping around.  
13 We're going to go back to the first half of 2019. I  
14 got a little distracted on the DES Hunter conversation,  
15 but now I'm going to talk a little bit about the first  
16 half.

17 A. Okay.

18 Q. So this document is entitled "Q2 2019 QBR."

19 A. Okay.

20 Q. What is a QBR?

21 A. Quarter -- Quarterly Business Review.

22 Q. Okay. And is this a document that you would  
23 have created?

24 A. It looks familiar, yes.

25 Q. It's date- -- it's dated April 4, 2019,

1 right?

2 A. Yes, that's --

3 Q. And is this something that you would review  
4 with your managers each quarter?

5 A. Yes.

6 Q. Okay.

7 A. Only as requested, yeah. It's not a  
8 requirement.

9 Q. Got it.

10 So if you go to the second slide.

11 A. Uh-huh.

12 Q. It says "Territory Overview," right?

13 A. Yes.

14 Q. "Six Accounts," and then it's got the first  
15 three accounts listed here, right?

16 A. Yes.

17 Q. And were those three accounts in your  
18 territory in the first half of '19?

19 A. Yes.

20 Q. Okay. And then go to Slide 3. There are  
21 three more accounts, Gap, Ingram Micro, and McKesson,  
22 right?

23 A. Yes.

24 Q. So those three accounts were also in your  
25 territory in the first half of '19?

1 A. Yes.

2 Q. Okay. And under McKesson there's a bullet  
3 that says "Excluded IBM from Data Center and Cloud  
4 RFP," right?

5 A. Yes.

6 Q. You mentioned that earlier, didn't you?

7 A. Yes.

8 Q. Okay. Go to Slide 4.

9 A. Yes.

10 Q. I think this is just the comparison of your  
11 quota and attainment so far in the half, right?

12 A. Yes.

13 Q. Under Primary it says "Grow installed  
14 accounts like McKesson."

15 You see that?

16 A. Yes.

17 Q. So even though IBM was excluded from this  
18 RFP, it sounds like there were still some opportunities  
19 at McKesson?

20 A. So -- no. The reason -- we did not -- "we,"  
21 meaning at least the storage group, we did not find out  
22 that -- at least -- well, I should say as a storage rep  
23 I did not find out that we were excluded from the RFP  
24 until about January, late January, from the account  
25 executive.

1 And then along with that, account executive  
2 and I were still hoping, right, they will do something  
3 before they transition everything to Google and  
4 Google's partner, Data Center partner. So that's why  
5 we were still, I guess, fighting, right, to -- to  
6 maintain and maybe even grow the account.

7 Q. And I believe you said that McKesson  
8 announced their partnership with Google in March of  
9 2019; is that right?

10 A. Yeah, I think it was at -- it's around March  
11 because it was a Google conference that McKesson went  
12 on stage and announced their partnership, yeah,  
13 some- -- sometime around March.

14 Q. Okay. All right. Go to the next slide.

15 A. Yeah.

16 Q. And it says "2Q Sales Connect Pipeline,"  
17 right?

18 A. Uh-huh.

19 Q. Right?

20 A. Yes. Oh, yes. Sorry.

21 Q. Thanks.

22 A. Did it again.

23 Q. And there are one, two, three, four, five,  
24 six McKesson opportunities identified on here, right?

25 A. Uh-huh.

1 Q. Yes?

2 A. Yes. Yes.

3 Q. So as of April 4th when you made this, you  
4 still had -- in fact, most of your opportunities in  
5 your pipeline were McKesson opportunities, right?

6 A. Yes.

7 Q. Did any of those pan out?

8 A. I can't see the entire description of that.  
9 I can tell you that starting from the bottom, BP1, that  
10 one did not because it has to do with the solution that  
11 I sold in 2017. Oops, sorry. I went too far.

12 Then go up again. Oh, two BP1's. They  
13 actually opened by the business partners. That's how I  
14 could tell that they are created by the business  
15 partners.

16 Q. Okay.

17 A. And -- and then the K9 is -- was what I  
18 created. Those are Internal Sales Connect IBM sales  
19 reps use, yeah, to create. Phase 1 of 3 of Hardware, I  
20 don't believe we closed any of the phases. We might  
21 have closed a small amount of the Phase 1, but not  
22 500,000.

23 Q. Okay.

24 A. Yeah.

25 Q. And so these opportunities here, you're

1 showing on this -- just on this slide about \$2 and a  
2 half million of opportunity at McKesson; is that right?

3 A. The ones that I created, 2 -- about -- yeah,  
4 about 2 million, right, the top four.

5 Q. Yeah.

6 A. Yeah.

7 Q. And -- and as of April 4th, did you -- did  
8 you still think those were a possibility?

9 A. I was still working them as stretch  
10 opportunities not knowing that there were further  
11 development at McKesson, so...

12 Q. Okay. All right. Going back to Slides 2 and  
13 3 --

14 A. Okay.

15 Q. -- where you've got the six accounts listed  
16 here, which of these were new accounts to you?

17 A. Foster Farms, Ingram Mico -- Micro.

18 Q. The other four were accounts that you'd  
19 previously had?

20 A. Yes.

21 Q. Okay. All right. Let me ask you to go to  
22 Exhibit 51.

23 A. Okay.

24 (Whereupon Exhibit 51 was marked for  
25 identification, a copy of which is attached hereto.)



1 THE WITNESS: Okay.

2 BY MR. BARNES:

3 Q. So this is an email from Todd Stacy to you  
4 copying Stacie Mason and Amy Buyarski, right?

5 A. Okay. Yes.

6 Q. Who's --

7 A. Yes.

8 Q. -- Stacie Mason? Who is Stacie Mason?

9 A. Stacie Mason is Todd's manager or was Todd's  
10 manager.

11 Q. Okay. This is dated April 4th, 2019, right?

12 A. Yes.

13 Q. So Todd says "Nelly, I appreciate all of your  
14 hard work in Q1. I look forward to your progress in  
15 Q2," right?

16 A. Yes.

17 Q. And so he was praising you for your hard work  
18 in Q1, right?

19 A. Yes.

20 Q. Would -- would Todd often praise you for your  
21 hard work?

22 A. No.

23 Q. He wouldn't?

24 A. Well, he's not one who praise -- who praise  
25 for the -- you know, just to praise. He praise because

1 he believe you have, you know, worked hard.

2 Q. Got it.

3 A. So yes, so -- in general.

4 Q. So in his second paragraph here, he says "Per  
5 my prior note to the team, here's where you're shaping  
6 up as of last week for Q2 versus Q3/Q4."

7 A. Uh-huh.

8 Q. "Right now you are calling 50 percent of  
9 plan."

10 What does that mean?

11 A. Oh, when you say -- when you say "calling  
12 50 percent of plan," that means that you believe you  
13 have high degree of -- it's a high degree of  
14 probability you will close 50 percent of your sales  
15 quota.

16 Q. Okay. So -- so he's saying here that as of  
17 April 4, you were calling -- you were expecting --  
18 there's a high probability that you would close  
19 50 percent of your plan; is that right?

20 A. Yes.

21 Q. Okay. And he goes on to say "I look forward  
22 to understanding how you look to attack your territory  
23 in Q2 and make adjustments in your business to impact  
24 Q3 and Q4 out-quarter pipeline build as you are rolling  
25 almost zero across the board in Q3/Q4," right?

1           A.    Right.  Okay.  That's what I'm reading too,  
2           yes.

3           Q.    So is he saying that your pipeline was  
4           showing zero for Q3 and Q4?

5           A.    Yes, that's what he put, yes.

6           Q.    Was that accurate?

7           A.    Possibly, but we all know that we get new  
8           accounts for the second half, so you're basically just  
9           creating pipeline for -- on accounts that you don't  
10          know whether you're going to have and then you --  
11          there's a saying within reps, "Don't create  
12          opportunities in there and fuck up your number for your  
13          first half and then stick me with it and now I have to  
14          explain why I'm not closing and now I pick up the  
15          account."  So I don't do that because I don't know  
16          whether I'll have the account or not.

17          Q.    Okay.

18          A.    Yeah.

19          Q.    So does that mean you -- you don't start  
20          working on opportunities for your pipeline until Q3  
21          rolls around?

22          A.    Until you get your account --

23          MR. WILLIAMS:  Objection to form.

24          THE WITNESS:  -- territory assigned -- sorry.

25          MR. WILLIAMS:  That's --

1 THE WITNESS: We -- we do not find -- find out --  
2 get -- we are not given our territory assignment until  
3 we're into the half.

4 BY MR. BARNES:

5 Q. Okay. All right. Let's go to Exhibit 52,  
6 please.

7 A. Okay.

8 (Whereupon Exhibit 52 was marked for  
9 identification, a copy of which is attached hereto.)

10 BY MR. BARNES:

11 Q. So this is an email from Todd Stacy to  
12 Scott Jensen.

13 Who's Scott Jensen?

14 A. I don't know.

15 Q. Okay. If you go down to the bottom of Page 2  
16 to top of Page 3, there's an email that starts from  
17 Arthur Beller.

18 A. Okay.

19 Q. You see that?

20 A. Yes.

21 Q. Who's Arthur Beller?

22 A. Art at that time, according to his title  
23 here, yeah, he was the V.P. of storage sales.

24 Q. Okay. So Arthur says in this email "Team, I  
25 want to get -- I want to go get a standing exception to

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1 hiring recruit without going to the review board so we  
2 have an ongoing and proactive approach."

3 You see that?

4 A. I see that. I -- yeah, yes.

5 Q. Okay. And if you go down a couple of  
6 sentences, he -- he states "Scott, can you create a  
7 file (simple spreadsheet) that would list by market and  
8 totals the number of resources that might be leaving  
9 due to performance, retire, move out, tech or sales,  
10 manager, or FLM and what city."

11 Do you see that?

12 A. Yes, I did see it.

13 Q. Okay. And then if you scroll up to the top  
14 of the first page, or I guess middle of the first page,  
15 Scott sends an email to John Oldham, Todd Stacy, and  
16 John Scott.

17 You see that?

18 A. I'm sorry. Did you say the top of Page 1?

19 Q. Middle.

20 A. Oh.

21 Q. Middle of Page 1.

22 A. Oh, oh, oh, okay. Yes.

23 Q. It's an email from Scott Jensen --

24 A. Got it. Okay. Yes, I see it.

25 Q. -- to John, Todd Stacy, and John Scott,

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1 right?

2 A. Yes.

3 Q. And Scott Jensen says "Please send your  
4 market hiring spreadsheet" -- excuse me. "Please send  
5 your market hiring spreadsheet back to me today per  
6 Art's request last Friday. See notes below," right?

7 A. Yes, I see that, yes.

8 Q. And then Todd responds to Scott and says  
9 "Scott, apologies for the delay in my response. See  
10 the attached file," right?

11 A. Yes, I see it.

12 Q. Okay. Let's go to Exhibit 53, which is the  
13 file that Todd attached to his email with Scott.

14 (Whereupon Exhibit 53 was marked for  
15 identification, a copy of which is attached hereto.)

16 BY MR. BARNES:

17 Q. You got it?

18 A. Yes.

19 Q. So there are four people listed on here, and  
20 it says "Reason for Leaving," and "Performance" is  
21 checked for all of them, right?

22 A. Yes.

23 Q. And you're on here along with Art Munoz,  
24 Coberen Mark, and Bill Asimos, right?

25 A. I see that.

1 Q. Who is Art Munoz?

2 A. He was someone on my team.

3 Q. Was he also a seller on your team?

4 A. Yes.

5 Q. How old was he?

6 A. I do not know.

7 Q. Do you know whether he was younger than you?

8 A. I would not know.

9 Q. Okay. Do you know how old Coberen Mark is?

10 A. I don't know either.

11 Q. And -- and he was also a seller on your team,  
12 right?

13 A. Yes.

14 Q. Do you know Bill Asimos?

15 A. No.

16 Q. Okay. It looks like Bill reported to a  
17 different manager, right?

18 A. Yes, looks like it. I never heard of his  
19 name.

20 Q. Okay. And so as of when Todd made this list  
21 in May of 2019, it looks like he was already thinking  
22 that you, Art, Coberen, and Bill might be leaving due  
23 to performance reasons, right?

24 A. I don't know what he was thinking. I didn't  
25 know that.

1 Q. Do you know what happened to Art, Coberen,  
2 and Bill?

3 A. I know Art, he -- well, from what I learned  
4 from him, he had to take a leave because I think either  
5 his father or something or he -- he has to take care of  
6 the child. So -- so at first he took a leave, and then  
7 he didn't come back. He took a leave of absence.

8 And then Coberen, my understanding from him  
9 was that he found a better job, paid better. I -- I  
10 don't know. I mean, that's -- I -- I only know it from  
11 brief conversation when I say goodbye to them.

12 Q. Were either -- I'm sorry. Go ahead.

13 A. When I said goodbye to them, yeah.

14 Q. Were either Art or Coberen put on Performance  
15 Improvement Plans?

16 A. I wouldn't know that. I don't know, yeah.

17 Q. What about Bill? What happened with Bill?

18 A. I don't even know Bill.

19 Q. So when did Art and Coberen leave?

20 A. Oh. Oh, I don't remember.

21 Q. Do you know why it was -- you -- your -- you  
22 were fired in July of 2020, right?

23 A. Yes.

24 Q. Do you know why even though you're on this  
25 list in 2019, why it wasn't until July of 2020 that you



1           were fired?

2           A.    I -- I do not know. I -- you know, I -- I  
3           have -- you know, even though my numbers did not speak  
4           for themselves, but all my managers knew that I put in  
5           the hard work. And in sales you all know that, you  
6           know, your attainment has a lot to do with quota. It  
7           has a lot to do with your customer cycle, which may or  
8           may not jive with IBM's.

9           Q.    And ultimately in a sales organization like  
10          you were in, it doesn't matter how hard you work if you  
11          don't sell.

12                Would you agree with that?

13          MR. WILLIAMS: Objection to the form.

14          THE WITNESS: As -- as a salesperson, I would  
15          agree to that. I -- you know, I -- when I -- when I  
16          say I'm a salesperson, I -- my job is to sell.

17          BY MR. BARNES:

18          Q.    And you were measured on whether you sold or  
19          not, right?

20          MR. WILLIAMS: Objection to form.

21          THE WITNESS: Yes, and I -- yes. I was also  
22          measured on customer sat too.

23          BY MR. BARNES:

24          Q.    Sure. All right. Let's go to Exhibit 43.

25          A.    Okay.

1 (Whereupon Exhibit 43 was marked for  
2 identification, a copy of which is attached hereto.)

3 BY MR. BARNES:

4 Q. This is your 2019 Global Performance  
5 Assessment, right?

6 A. Yes.

7 Q. And if you go to the last page, it is signed  
8 by Todd Stacy, right?

9 A. Yes.

10 Q. But it looks like right above that the  
11 comments were made by Sandra Florey, right?

12 A. Right, yes.

13 Q. Is Sandra Florey the one who actually gave  
14 you the ratings in here?

15 A. At that time I believe Amy Buyarski was  
16 handling -- she's like -- she was like a software sales  
17 executive supporting Sandy, so I believe, you know, the  
18 managers get together and talked about it.

19 Q. So you think your 2019 review was completed  
20 by Amy and Sandy together?

21 A. I -- I would think so, yeah.

22 Q. Okay. So if you look at Page 5 is where your  
23 Dimension Ratings start.

24 A. Yes.

25 Q. You received an Expects More for Business

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1 Results, right?

2 A. Yes.

3 Q. An Achieves for Client Success, right?

4 A. Yes.

5 Q. And Expects More for Invasion, right?

6 A. Yes.

7 Q. And Achieves for Responsibility to Others,  
8 right?

9 A. Yes.

10 Q. And then Achieves for Skills, right?

11 A. I see it, yes.

12 Q. Okay. Do you agree with those ratings for  
13 2019?

14 A. At the time I did.

15 Q. You don't now?

16 A. As I mentioned before, I focused more on,  
17 right, the business results, right, and that I agree.  
18 But Responsibility to Others, no. Actually, Invasion,  
19 I -- I -- thinking back, no, I don't agree.

20 Q. But you still agree with the Business Results  
21 rating?

22 A. The Business Results rating is about right  
23 where the -- the numbers -- whether you hit your  
24 numbers.

25 Q. And -- and you didn't hit your numbers?

1           A.    In 2019, no.  If you don't hit down to the  
2           dollar 100 percent, you don't -- you don't achieve.  
3           That's how the rating is given out.  You can't be  
4           99 percent and get an Achieve.

5           Q.    All right.  Scroll down to Page 6 where it  
6           says "Comments by Sandra Florey."

7           A.    Uh-huh.

8           Q.    So about halfway down Sandra writes "I look  
9           forward to seeing Nelly have her own territory in  
10          2020."

11          You see that?

12          A.    I can't expand it.  I can't find it.  Where  
13          is that?

14          Q.    It's --

15          A.    Oh, yes, I see it now.  Yeah, about six or  
16          seven sentences down, yes.

17          Q.    Okay.  It says "I look forward to seeing  
18          Nelly have her own territory in 2020 and  
19          exercise/develop more hunting skills."

20          You see that?

21          A.    Yes.

22          Q.    What does "hunting skills" mean?

23          A.    That means that you have accounts that have  
24          no IBM installation, so you cold-call.  You cold-call.  
25          You build relationship.  You find out what they have

1 and then hope that, you know, they actually will talk  
2 to you.

3 Q. A few sentences later she says "I expect her  
4 to be successful in her new role which will require her  
5 to be more of a hunter than a farmer."

6 What's the difference between a hunter and a  
7 farmer?

8 A. A farmer is you have accounts that already  
9 have an install base, so you have a possibility of  
10 growing the account. They buy more because they have  
11 to store more data, right? So that's a farmer. So you  
12 have to -- the account relationship is -- you're  
13 maintaining the account relationship and you don't have  
14 to cold call as much because you already have some  
15 customer contacts that you can build on.

16 Q. Do you think that -- would it be reasonable  
17 to expect IBM to put their best sellers in hunting  
18 roles as opposed to farming roles?

19 MR. WILLIAMS: Objection to form.

20 THE WITNESS: I -- I don't know what I can say  
21 about what IBM expect. I do -- I did hear that IBM is  
22 shifting their belief that everything is an 80 -- 80/20  
23 rule, meaning 20 percent of your customers will bring  
24 in 80 percent of revenue and then just ignore the other  
25 80 percent of the companies out there. So IBM is

1           trying to go after accounts we never touched before.

2           BY MR. BARNES:

3           Q.    And part of their strategy was to go after  
4           accounts that they'd never touched before?

5           A.    Right.

6           Q.    And -- and that's what was being expected of  
7           you in the first half of 2020?

8           A.    That's the -- that's -- that's just the  
9           territory, the accounts that I ended up getting.

10          Q.    Did you think your territory in the first  
11          half of 2020 had a lot of opportunities?

12          A.    I did not know that going in because we had  
13          no intelligence on them. I had no intelligence on them  
14          when I got the account listing.

15          Q.    By Q2 of 2020, did you think there was  
16          opportunity in the territory?

17          A.    No.

18          Q.    Why not?

19          A.    COVID hit. All the accounts that I had, they  
20          were smaller companies. I had travel companies. I had  
21          Thai companies, and West and Pacific Northwest were hit  
22          by COVID very early on.

23          Q.    When did you start noticing an impact on your  
24          territory from COVID?

25          A.    Probably about maybe mid-February as my

1 system architect and I were still trying to call  
2 potential cold contacts of these accounts, right, based  
3 on our research, on LinkedIn, on everything, right, all  
4 the -- all the marketing research tools, tried to call  
5 them, and we were not getting any calls back.

6 And then we would hear that people were not  
7 going into the offices, so calling did not do anything.  
8 And we started emailing, but then because a lot of  
9 these accounts never heard from IBM, so we -- you know,  
10 our email probably went into the junk folder for all we  
11 know.

12 So -- so when we were not getting a whole lot  
13 of responses, we did create a lot of marketing' -- other  
14 marketing activities, partnering with business  
15 partners. But definitely by third week of -- of  
16 February we know all the Pacific Northwest accounts are  
17 pretty much shut down, right, from communicating with  
18 us.

19 Q. Who assigned you that territory in those  
20 accounts?

21 A. I wouldn't know that. I -- I mean, I was  
22 given to -- they were given to me by my first line  
23 manager then.

24 Q. You think when those accounts were given to  
25 you, your managers knew that there was no opportunity

1           there?

2           A.    I wouldn't know. I don't know what -- what  
3           they know.

4           Q.    You don't --

5           A.    I was -- go ahead.

6           Q.    Do you think your managers gave you those  
7           accounts knowing that you were not going to succeed  
8           with them?

9           MR. WILLIAMS: Objection to the form.

10          THE WITNESS: I wouldn't know how they were  
11          thinking.

12          BY MR. BARNES:

13          Q.    Did anyone ever say anything to you that made  
14          you think that that was the case?

15          A.    I can't recall anyone saying the way you said  
16          it. I recall they said it's going to be a tough  
17          territory going in.

18          Q.    Who said that?

19          A.    I can't remember whether it was Todd, I  
20          think, or -- yeah, or -- or Amy, because these are all  
21          smaller in size accounts, right, or they might be  
22          bigger companies, but IBM has no traction with them.  
23          So any time that you get accounts that you have to  
24          cold-call, it is a tough account.

25          Q.    Do you think you had the skills you needed to



1           succeed in that territory?

2           A.    Yes, I believe so.

3           Q.    And so when you -- when you left the  
4   DES Hunter role in the first half of 2020, was it  
5   essentially the same role you had before DES Hunter,  
6   just with a different set of accounts and territory?

7           A.    Pretty much, yes.

8           Q.    All right. Let me pull up the next exhibit.

9           A.    Okay.

10          Q.    This will be Exhibit 54.

11          A.    Okay.

12                   (Whereupon Exhibit 54 was marked for  
13   identification, a copy of which is attached hereto.)

14   BY MR. BARNES:

15          Q.    This is an email from Amy Buyarski to someone  
16   named Johnny copying you, right?

17          A.    Yes.

18          Q.    It's dated January 13, 2020, right?

19          A.    Yes.

20          Q.    She says "Happy new year. Need a favor.  
21   Could you spend time with Nelly as she is picking up  
22   some of the Pacific Northwest territory around your  
23   customer meetings with specific clients, the good and  
24   bad," right?

25          A.    Yes --

1 Q. So Amy --

2 A. -- I see that.

3 Q. Amy was trying to connect you with other  
4 people who had experience with these clients to try and  
5 help get you up to speed.

6 Is that fair?

7 A. According to this email, yes.

8 Q. And was that your impression, that she was  
9 doing that?

10 A. Yes, that was the impression, that she was  
11 trying to help.

12 Q. If you go to Page 2 of this, it looks like  
13 Amy the same day reached out to someone named  
14 David Johnston?

15 A. Yes.

16 Q. Right?

17 A. Yes.

18 Q. David's got a sirius.com email address. Was  
19 he not IBM?

20 A. No, he was a business partner.

21 Q. Got it.

22 And so Amy's reaching out to David to see if  
23 he can connect with you. She says that you're picking  
24 up the northern portion of Jack Egan's territory, and  
25 she's reaching out to David to try to get him to help

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1       you as well, right?

2           A.    Yes.   Yes, she was making a soft introduction  
3       for me, yes.

4           Q.    And then the third page, there's an email  
5       from Amy to Sandy, Jack Egan, and -- and you, right?

6           A.    Yes.

7           Q.    And she says "Jack, since you were behind  
8       this effort in Pacific Northwest, I'd like to get some  
9       help," right?

10          A.    Yes.

11          Q.    Who is Jack Egan?

12          A.    He -- he was another sales seller, storage  
13       seller.

14          Q.    And was he moving to a different role or  
15       different territory?

16          A.    No.   If I recall correctly, he was the only  
17       one covering the Pacific Northwest, so he had a few  
18       hundred accounts, which most of them he never called on  
19       because he did not have the bandwidth.   So that's an  
20       effort to grow IBM's presence in Pacific Northwest.   I  
21       was asked to pick up some of his accounts.

22          Q.    Okay.

23          A.    Yeah.

24          Q.    How old is Jack?   Do you know?

25          A.    Oh, Jack?   Based on the experience and the

1 work, I thought he was older than me. I don't know.  
2 He's about the same age.

3 Q. All right. And -- and so here Amy's asking  
4 Jack to get a call lined up with Trevor.

5 Who's Trevor?

6 A. Trevor, if I recall correctly, at that time  
7 he was my inside salesperson, I think, yeah.

8 Q. Okay.

9 A. Yeah.

10 Q. In any event, this is another example of Amy  
11 trying to get you up to speed, right?

12 A. Yes.

13 Q. Okay. So was Sandy your manager at the start  
14 of 2020 or was Amy?

15 A. Sandy. I think Sandy did not leave until  
16 like February or something. I can't remember when she  
17 left. I got the quota letter from Sandy, but Amy was  
18 like a software sales executive, so her business  
19 objectives tied to Sandy's, and so she continued to  
20 provide assistance as much as possible, right?

21 Q. Got it.

22 And when Sandy left, who became your manager  
23 at that point?

24 A. When Sandy first left, we did not have a  
25 first line manager. I think Amy, you know, supported,

1 right, and -- and stepped in to help, yeah. We didn't  
2 have a manager for -- until Robert came on board.

3 Q. And when did Robert come on board?

4 A. Oh, gosh, I want to say May -- April, May  
5 maybe, yeah.

6 Q. Okay.

7 A. Yeah.

8 Q. All right. Let's take a look at Exhibit 20.

9 A. Okay. 20. Oh, did you just load it? Okay.  
10 Hold on. Let me refresh.

11 Q. Let me know when you're there.

12 A. Okay. Yes.

13 Q. So if you go to Page 2.

14 A. Page 2. Okay.

15 Q. There's an email bottom of -- actually, start  
16 in the middle of Page 2.

17 Sandy sends an email to Todd Stacy on  
18 February 6th, right?

19 A. Yes.

20 Q. And she says "Todd, I made some updates below  
21 and added a section on people following my Checkpoint  
22 discussions this past week," right?

23 A. Yes, I see it.

24 Q. And then she says "You'll notice I'm  
25 recommending Laura be put on a Performance Improvement

1 Plan."

2 You see that?

3 A. Yes.

4 Q. And is that the Laura on your team that you  
5 were talking about earlier?

6 A. Yes. Yes.

7 Q. Do you know whether Laura was put on a  
8 Performance Improvement Plan?

9 A. I don't know that.

10 Q. Do you know how old Laura is?

11 A. I wouldn't know that.

12 Q. Okay.

13 A. I think I met her one -- once, so...

14 Q. All right. So if you scroll down through  
15 Sandy's email, her summary of you is on Page 4, the  
16 bottom of Page 4.

17 A. Page 4. Okay.

18 Q. You see that?

19 A. Not yet. Sorry. Yep, I see it. Okay.

20 Q. It says "She's capable, seems somewhat  
21 energized with the new territory."

22 You see that?

23 A. Oh, yeah, yeah. I see, yeah.

24 Q. It says -- under your name it says "She's  
25 capable, seems somewhat energized with the new

1 territory. Because of her integrity, she'll continue  
2 to be a hard worker, but I questioned her level of  
3 engagement which was probably a result of the  
4 DES Hunter role."

5 You see that?

6 A. Yes, I see it on here, yes.

7 Q. Did Sandy ever say anything to you about  
8 questioning your level of engagement?

9 A. No, she never did.

10 Q. Do you know why she would have wrote that  
11 here?

12 A. I don't know why.

13 Q. It goes on to say on the top of Page 5 "Need  
14 to make sure she doesn't got too focused on just a  
15 couple of accounts that it prevents her from developing  
16 business across the territory."

17 You see that?

18 A. Yes, I see that.

19 Q. Was -- did you have issues in the past  
20 getting too focused on just a couple of accounts?

21 MR. WILLIAMS: Objection to form.

22 THE WITNESS: No. I always cover all the accounts  
23 that I have, that I -- I was given.

24 BY MR. BARNES:

25 Q. So you ultimately -- you did not meet your --

1 we mentioned earlier that Sandy told you the  
2 expectation was \$1.6 million from each of you in the  
3 first half of 2020.

4 You remember talking about that?

5 A. Yeah, according to her email, yes.

6 Q. And you did not hit that \$1.6 million number,  
7 right?

8 A. No.

9 Q. I want to make sure that's clear.

10 Is it correct that you did not hit that  
11 \$1.6 million number?

12 A. I was an SRAP, so I did not sell \$1.6 million  
13 of products.

14 Q. Okay. And you mentioned earlier one of the  
15 reasons was because COVID hit, right? We talked about  
16 that.

17 A. Yes.

18 Q. Do you think that your territory was impacted  
19 more than any other sellers on your team by COVID?

20 MR. WILLIAMS: Objection to form.

21 THE WITNESS: I don't have enough knowledge of my  
22 peers' territory to say that. I know mine was severely  
23 impacted.

24 BY MR. BARNES:

25 Q. Did you talk to your peers about whether



1           their territories were impacted by COVID?

2           A.    Oh, to an extent that we say no one was  
3           returning our calls or emails.

4           Q.    So your peers told you they were having that  
5           experience as well?

6           A.    Well, I -- I did not talk to everyone. I  
7           only talked to a couple of them, yeah.

8           Q.    Who did you talk to?

9           A.    I might have talked to Jack. I may have  
10          talked to Randall because we all had -- had smaller  
11          accounts and many of them IBM had no presence in them,  
12          so we have -- we -- we were all cold-calling.

13          Q.    So I want to make sure I'm clear about this.

14                  You said you might have called Jack and --

15          A.    I might have talked to Jack, right.

16          Q.    And -- and I just want to make sure I  
17          understand.

18                  Who do you specifically remember talking to  
19          about this? Not who might you have spoken to about  
20          this.

21          A.    About -- oh, about people not returning our  
22          calls? Brad Ashbaugh definitely. He's my system  
23          architect. And also the inside salesperson, because  
24          we -- we try to divide up contact names that we find on  
25          the internet and try calling everyone, and then we will

1           come back and say, you know, whether we had any  
2           success.

3           Q.     Right.

4                     And I'm talking about your peers, the other  
5           sellers who were in the same role as you.

6           A.     I -- I cannot tell you for sure who.

7           Q.     Okay. So other than COVID, were there any  
8           other reasons that you were unable to -- or that -- let  
9           me restart that.

10                    Other than COVID, were there any other things  
11           that impacted or prevented your ability to sell into  
12           your territory in 2020?

13           A.     Not that I can think of at this point. I  
14           mean, not that I could remember that there were any  
15           other reasons.

16           Q.     Did you lose your mother around that time?

17           A.     Yes, I did.

18           Q.     And I believe she -- did she pass from COVID?

19           A.     Yes, COVID complications.

20           Q.     Okay. And when was that?

21           A.     Mother's -- May -- May 10, 2020,  
22           Mother's Day.

23           Q.     Oh, I'm very sorry to hear that.

24           A.     Me too.

25           Q.     Yeah. So that would have been towards the

1 end of the half, but --

2 A. Yes.

3 Q. -- did that impact your ability to -- to sell  
4 in your territory in the first half of 2020?

5 A. No.

6 Q. All right. Let's -- let me pull up a few  
7 more exhibits here.

8 A. Okay.

9 MR. BARNES: So this next one will be Exhibit 55.

10 (Whereupon Exhibit 55 was marked for  
11 identification, a copy of which is attached hereto.)

12 BY MR. BARNES:

13 Q. Okay. Should be up.

14 A. Okay.

15 Q. You see it?

16 A. Yes.

17 Q. Okay. So this is an email from Amy to  
18 Todd Stacy copying Robert Cortez on  
19 February 24th, 2020, right?

20 A. Yes.

21 Q. And she's got two categories here. One says  
22 "Active Territories" and one says "On Life Support."

23 You see that?

24 A. Yes.

25 Q. And under On Life Support she's got you,

1 Laura Cook, and Jack Egan listed, right?

2 A. Yes.

3 Q. Would you agree that your territory was on  
4 life support at that point?

5 A. Yes.

6 Q. It also says "750,000 in total pipeline as  
7 Savemart is not valid."

8 What does that mean?

9 A. I had -- I think if I recall correctly, I had  
10 Savemart assigned to me as part of my territory, and as  
11 I got into role, Savemart actually is owned by some  
12 other company that another team has, so it really did  
13 not matter. You know, the work that I put in, I would  
14 not get credit, so -- and so that's why she said  
15 Savemart is not valid.

16 So even though once a territory assignment  
17 goes in the system, you cannot take it out, but then --  
18 but then -- because when they purchased, they were  
19 purchased through the parent company, so it would not  
20 be the right customer number that would flow to me  
21 anyway.

22 Q. Okay.

23 A. IBM goes by customer, not by name.

24 Q. Yeah, I got you.

25 All right. Let's take a look at Exhibit 56.

1 A. Okay.

2 (Whereupon Exhibit 56 was marked for  
3 identification, a copy of which is attached hereto.)

4 BY MR. BARNES:

5 Q. And this is an email from Amy to Todd,  
6 copying Robert on February 25th, 2020, right?

7 A. Okay.

8 Q. Is that right?

9 A. Yes.

10 Q. She says "Todd, snapshot from -- snapshot  
11 from 2/25 daily report," right?

12 A. Yes.

13 Q. And then there's a section where she says "1Q  
14 pipeline by rep."

15 Do you see that?

16 A. Yes, I see it.

17 Q. Your pipeline is listed as \$80,000 there,  
18 right?

19 A. Yes.

20 Q. And do you recall whether that was your  
21 pipeline at that point?

22 A. I don't recall whether that was my pipeline.

23 Q. This reflects that you had the lowest  
24 pipeline on the team, right?

25 A. According to this, yes.

1 Q. And do you know whether that was true, that  
2 you had the lowest pipeline on the team?

3 A. I do not know that.

4 Q. Okay.

5 A. I did not know that, nor do I know that now.

6 Q. All right. Let me pull up the next exhibit.  
7 This will be Exhibit 57.

8 (Whereupon Exhibit 57 was marked for  
9 identification, a copy of which is attached hereto.)

10 BY MR. BARNES:

11 Q. Let me know when you have it.

12 A. Yes. Let me open.

13 Q. This is an email from Amy to Todd dated  
14 March 31, 2020, right?

15 A. Yes.

16 Q. And the subject of the email is "2Q pipeline  
17 in Nelly's territory and actions from today," right?

18 A. Uh-huh, yes.

19 Q. So there's a couple of accounts listed here  
20 that I just want to get some clarification on. First  
21 is Les Schwab. It says is "Not valid for the quarter.  
22 Tape deal is dead."

23 What does that mean?

24 A. I was working on a tape -- tape deal at  
25 Les Schwab to replace some old equipment, and

1 Les Schwab is a tire company. By that time they know  
2 that their business is in jeopardy, so they decided not  
3 to pursue any re- -- refresh or replacement, so that's  
4 what she meant.

5 Q. Okay. The next one says it's Fair Isaac.

6 A. Yes.

7 Q. It has "She has this key stretch. We have  
8 not had a single conversation with the customer or  
9 business partner."

10 You see that?

11 A. Yes.

12 Q. Is that true?

13 A. Not true about the business partner. I have  
14 had many conversations with the business partner, and  
15 that was an account that -- IBM has a courtesy with  
16 business partners if they have been calling into the  
17 account for a while and they have the relationship, we  
18 work through them, so I have had discussions with the  
19 business partner.

20 Q. Okay. Then the next one is Zoox.

21 Is that how you say that?

22 A. Zoox, yeah. Zoox, yeah.

23 Q. It says "Project is off per the business  
24 partner," right?

25 A. Yes.

1 Q. Was that correct?

2 A. Yes.

3 Q. Then the next --

4 A. Yeah.

5 Q. I'm sorry. Go ahead.

6 A. I actually brought the business partner in.  
7 It -- it is a start-up, and we worked together on it  
8 and -- and it's off because the start-up did not get  
9 the funding, the round of funding that they needed.

10 Q. And then Reliable Parts, it says "I think we  
11 sold the small upgrade in 4Q. It was under 10k."

12 Is that true?

13 A. I don't -- I wouldn't know. I did not have  
14 that account in 4Q, so I don't know what they sold.

15 Q. Okay.

16 A. Yeah.

17 Q. So after that she says -- Amy says here "Once  
18 you take those items out, her territory is around zero  
19 in pipeline, zero hardware, zero software."

20 You see that?

21 A. Yes, I see it was wrote here, yes.

22 Q. Is that true?

23 A. I would say probably not true, because my  
24 system architect and I, we were hosting a lot of  
25 webinar sessions. We invited potential or possible



1 customers based on our research on what their -- what  
2 their technology landscape were, and we had put in  
3 pipeline for -- you know, stretch pipeline,  
4 nonetheless, yeah.

5 Q. She goes on to say "There's no way in any  
6 good faith I can certify her pipeline with the atlas  
7 records she has marked as At Risk and Key Stretch as I  
8 know they are not valid, nor do I think we should waste  
9 any time around another PTMP," right?

10 A. Okay. Yes, I -- I read it here too, yeah.

11 Q. What is a PTMP?

12 A. Plan to make plan.

13 Q. Okay. She says "Instead you should have a  
14 conversation with her one-on-one this week," right?

15 A. Yes.

16 Q. Do you remember having a one-on-one with Todd  
17 around this time?

18 A. I cannot recall.

19 Q. Okay. All right. Take a look at Exhibit 58.

20 A. Okay.

21 (Whereupon Exhibit 58 was marked for  
22 identification, a copy of which is attached hereto.)

23 BY MR. BARNES:

24 Q. Let me know when you're there.

25 A. Yes, I'm here.

1 Q. Okay. This is an Excel sheet that has two  
2 tabs. The first is a Summary tab, and then the second  
3 is the Details tab, and these -- my understanding, this  
4 is -- these were all the deals that you closed in the  
5 first half of 2020. And this reflects -- if you're on  
6 the Summary tab, reflects that you sold \$87,443.31 in  
7 the first half of 2020.

8 Does that sound right to you?

9 A. The deals that are listed here are correct,  
10 but I also sold a -- a deal at Zirkle Fruits, which did  
11 not flow to me.

12 Q. How -- how big was that deal?

13 A. Oh, I think it's \$50,000.

14 Q. Okay. So that would bring it up to about  
15 \$135,000, if I'm doing the math -- \$137,000 if I'm  
16 doing the math right?

17 A. That sounds about right.

18 Q. So any other deals that are missing from  
19 here?

20 A. Not that I can think of right now.

21 Q. Okay. And the deal you mentioned that was  
22 not flowing to you, why did you work -- was it not in  
23 your territory?

24 A. I was assigned the Zirkle, Z-i-r-k-l-e,  
25 Zirkle Fruits customer number. It is a private

1 company. They also have a sales arm, Rainier Fruits.  
2 You might have seen Rainier cherries. And when it came  
3 time to issue the purchase order, it was issued out of  
4 Rainier Fruits --

5 Q. Okay.

6 A. -- letterhead, yeah.

7 Q. Gotcha.

8 A. So I -- it was a situation I presented to  
9 Amy, who was the interim manager, and I also reached  
10 out to Todd about -- before the customer even agreed to  
11 purchase that, but the customer did tell me that more  
12 than likely they will issue the PO through the sales  
13 division.

14 Q. Okay. Gotcha.

15 So -- so ultimately put on a Performance  
16 Improvement Plan in June of 2020, right?

17 A. Yes.

18 Q. And by that time Robert Cortez was your  
19 manager?

20 A. Yes.

21 Q. Before you were put on the Performance  
22 Improvement Plan, were you having weekly meetings with  
23 Robert to talk about your territory and your  
24 performance?

25 A. We had a weekly cadence call to talk about

1           our pipeline.

2           Q.    Did you have that the entire path?

3           A.    I don't think -- I can't remember. I don't  
4           think he had weekly calls with everyone, so he -- I --  
5           if I recall correctly, he had kind of alternate; a  
6           couple of people one week and then a couple of people  
7           the following week. And then sometimes, you know, if  
8           they're -- because of how all my accounts are pretty  
9           much either filing bankruptcy or going on pause, so  
10          there were probably weeks we did not talk knowing that,  
11          you know, that's kind of the -- the situation that I  
12          was dealing with.

13          Q.    Did he offer to have additional midweek calls  
14          with you to talk about your pipeline?

15          A.    I can't remember that we did, yeah.

16          Q.    Well, can you remember whether he offered  
17          that?

18          A.    I -- I don't remember that he offered that.

19          Q.    Could it have happened and you just don't  
20          remember?

21          A.    Well, we weren't even having weekly calls, so  
22          I doubt it very much.

23          Q.    Before you were put on the Performance  
24          Improvement Plan, did -- did Robert have a conversation  
25          with you about whether you were interested in the job

1 and wanted to stay in the job?

2 A. No, he did not.

3 Q. You don't remember ever telling Robert that  
4 they should just RA you?

5 A. Never.

6 Q. What does RA mean?

7 A. Resource Action. That's usually a layoff, a  
8 big layoff program that IBM has.

9 Q. So you never told anyone that they should  
10 just RA you?

11 A. No.

12 Q. How were you told about or given the  
13 Performance Improvement Plan?

14 A. I recall getting a call invitation from  
15 Robert, and I believe it was something he sent for the  
16 following week. And then we got on the call, and  
17 that's -- that's when he told me that I was put on a  
18 PIP.

19 Q. Did you walk through the PIP in that meeting?

20 A. At a high level. I -- I saw, you know, the  
21 high-level points, yeah.

22 Q. What else do you remember about that  
23 conversation?

24 A. I remember saying to him that the objectives  
25 that were on the PIP were not reasonable.

1 Q. And was --

2 A. And --

3 Q. Go ahead.

4 A. A PIP is not supposed to be something that  
5 you give me two weeks to go do in the market condition  
6 that we were in.

7 Q. What was his response to those two things?

8 A. At first he said, "Well, look, I've only been  
9 here five weeks as your manager," like that. And then  
10 he said, "It's all about the numbers."

11 And I ask him -- I remember asking him,  
12 "Robert, what numbers are you referring to?" And he  
13 did not answer me.

14 Q. What else do you remember about that  
15 conversation?

16 A. I remember telling him that based on how  
17 those objectives were set, I said it seems like this  
18 PIP is written to guarantee that I'm fired.

19 Q. And what was his response to that?

20 A. He didn't have a response.

21 Q. What else do you remember about that  
22 conversation?

23 A. I remember saying to him -- because he  
24 started out as my peer. So I said to him, "Robert, I  
25 don't want to give you any trouble, because if you said

1           this is how it came down, I'll -- I'll read it and  
2           then -- then we go from there." That's what I said to  
3           him.

4           Q.    And what was his response to that?

5           A.    He didn't have any response to that.

6           Q.    Okay. Is there anything else about that  
7           conversation you remember?

8           A.    The conversation, no. It was -- it was -- it  
9           was very abrupt, how it was delivered. I guess for the  
10          most part, I was just in shock.

11          Q.    Okay. During the PIP, the -- the period of  
12          the PIP, did you have periodic meetings with Robert to  
13          talk about your progress?

14          A.    No, he did not have any more meetings with  
15          me. I ended up calling him on June 30th and asking  
16          him, "So what does this mean now?"

17                   And he told me that, "You're out."

18          Q.    You said that on June 30th?

19          A.    Well, I believe it was on June 30th, yes,  
20          because I called.

21          Q.    But then you didn't end up getting fired for  
22          a few more weeks, right?

23          A.    Yeah. So my PIP period was June 30th, but  
24          then my departure date was July 31st.

25          Q.    And so you didn't have any meetings -- other

1           than that time you called him, you didn't have any  
2           meetings with Robert to talk about your progress?

3           A.    No.

4           Q.    Did he offer to have any meetings?

5           A.    No, he didn't.

6           Q.    All right.  Let's take a look at the PIP.  
7           It's Exhibit 59.

8           A.    Okay.

9                       (Whereupon Exhibit 59 was marked for  
10           identification, a copy of which is attached hereto.)

11          BY MR. BARNES:

12           Q.    And can you confirm that this is the  
13           Performance Improvement Plan that you were given?

14           A.    It looks about right.

15           Q.    Okay.  And at the top it says "Originator,  
16           Robert Cortez," right?

17           A.    Yes.

18           Q.    And it says "Review period, June 18 through  
19           July 22," right?

20           A.    Oh, no.  My -- it was through the 30th.  It  
21           was not July 22.

22           Q.    This document says June 18 through July 22,  
23           right?

24           A.    Yeah, this document says, but the PIP that  
25           I -- I reviewed with him, my review period was June 18



1 through the 30th, but then my last day would be  
2 July 31st.

3 Q. So you're saying that the version that you  
4 were -- the version of the PIP that you were given, at  
5 the top where it says "Review period" said June 18  
6 through June 30?

7 A. Yes.

8 Q. You sure about that?

9 A. That's what I recall. That -- that's what I  
10 recall.

11 Q. Okay. So under Areas of Improvement, this  
12 has five different entries, right?

13 A. Yes.

14 Q. The first one says "Pipeline growth through  
15 OI generation," right?

16 A. Yes.

17 Q. What does OI mean?

18 A. Opportunity identification.

19 Q. Okay. And so Measurement underneath that  
20 says "3x pipeline growth of validated opportunities of  
21 4.23 million by July 22nd, 2020," right?

22 A. Yes, I see that, yes.

23 Q. And so this was asking you to create a  
24 pipeline of 4.23 million by July 22nd; is that right?

25 A. I -- I actually asked him about that. I

1 asked him generally. We would get our territory  
2 account assignment, like, seconds -- like weeks into  
3 the half. So I asked him whether this was -- this --  
4 this goal is for second half, and it was for second  
5 half.

6 I -- I did not even know what my accounts  
7 were or would be, so I would not be able to come up  
8 with a pipeline of \$4.3 million. Then he kind of said,  
9 "Oh, well, it's for first half."

10 Q. Okay. And were you able to achieve that?

11 A. No, I was not. I did not have a \$4.2 million  
12 of terr- -- of territory, even on a good day -- even on  
13 a good day.

14 Q. So do you recall that you produced to us a  
15 version of the PIP?

16 A. I don't remember.

17 Q. Well, did you have a version of the PIP in  
18 your possession?

19 A. I don't think so. I try not to keep much of  
20 anything -- IBM documents not knowing whether that's  
21 considered confidential or not. Not that -- I can't  
22 recall.

23 Q. Okay. Well, let me -- because I want to make  
24 sure we're looking at the correct version of this, so  
25 let me introduce Exhibit 60.

1           A.     Okay.

2                     (Whereupon Exhibit 60 was marked for  
3     identification, a copy of which is attached hereto.)

4     BY MR. BARNES:

5           Q.     Let me know when you're there.

6           A.     Okay.

7           Q.     This is the version of the PIP that you  
8     produced to us.

9           A.     Okay.

10          Q.     Do you know where you got this?

11          A.     I believe, if I recall, I might have gotten  
12     that as part of the exit package, because I got a  
13     package from IBM on, you know, the things I had to  
14     sign, you know, things like that.

15          Q.     Okay.

16          A.     It might have been. I don't remember.

17          Q.     And this Exhibit 60, the review period here  
18     says June 18 through July 22, right?

19          A.     That's what it says, yeah.

20          Q.     And then staying on Exhibit 60 here going  
21     down to Goal 1.1 that we were just talking about,  
22     the -- the version that you were given, did it say this  
23     4.23 million by July 22nd?

24          A.     I -- I seem to recall that, yes.

25          Q.     Right, because you had the conversation with

1 Robert --

2 A. Right, right.

3 Q. -- about whether that applies to first or  
4 second half, right?

5 A. Right, right, yeah.

6 Q. Okay. And you did not meet that goal, right?

7 A. No, because my work is supposed to have been  
8 done by the 30th, so I wasn't creating pipeline, right,  
9 for -- you know, by July 22nd.

10 Q. Did you grow your pipeline at all after being  
11 given this?

12 A. I -- yes. So the way I understood was that  
13 my last day of work, right, official last day of work  
14 was June 30th, but I would be paid through July 31st.  
15 IBM was not going to reclaim my laptop, so I continued  
16 to work on another opportunity at Raley's, so I did  
17 grow pipeline, but not 4.3 million.

18 Q. So hold on.

19 So you were told your last day of employment  
20 was June 30th?

21 A. My last day of work should be June 30th, but  
22 I would be paid through July 31st.

23 Q. Who told you -- told you your last day of  
24 work was June 30th?

25 A. I recall that came from Robert.

1 Q. When?

2 A. When I got the PIP.

3 Q. So Robert was telling you that you were fired  
4 when you got the PIP?

5 A. No, no, no. He gave me the PIP on the 18th.  
6 I wasn't fired then, yeah.

7 Q. But he told you you --

8 A. If I -- if I did not meet these by the 30th,  
9 right, then yeah, my last day would be the 30th.

10 Q. Right.

11 But he told you -- he didn't tell you that  
12 you were absolutely going to be fired on June 30th, did  
13 he?

14 A. When I called him and asked him that I missed  
15 some of these measurements, the June 30th measurements,  
16 the goals, I called him and I said, "What does this  
17 mean," right?

18 He said that, "As soon as you miss one,  
19 you're out."

20 Q. I get that. I'm talking about when he gave  
21 you the PIP. It sounds like you're saying when he gave  
22 you the PIP, he told you your last day was June 30th.

23 Is that what you're telling me?

24 A. No. He told me that if I don't meet these  
25 goals, my last day would be the 30th, but I would be

1       paid through the 31st.

2               Q.    And that's what he told you during the  
3       meeting when he gave you the PIP?

4               A.    That's what I recall.

5               Q.    So between that meeting and June 30th, did  
6       you increase your pipeline at all?

7               A.    I think I increased it by -- by the Raley's  
8       opportunity.

9               Q.    And how much was that one?

10              A.    That was supposed to be -- it might have been  
11       like 200,000.

12              Q.    Okay. So Goal 1.2 on here is Atlas Hygiene.  
13                      Was Atlas your CRM?

14              A.    Yes.

15              Q.    It says "Maintain best practices of coding,  
16       comments and dates are updated weekly."

17                      You see that?

18              A.    Yes.

19              Q.    And did you do that?

20              A.    Yes, I did.

21              Q.    So was that a reasonable expectation?

22              A.    Yes. That's what we are expected to do on a  
23       weekly basis.

24              Q.    So Robert says here you did not meet that  
25       requirement, but you don't think that's true?

1 A. I don't believe that --

2 MR. WILLIAMS: Objection. Objection to the form.

3 BY MR. BARNES:

4 Q. Oh, wait.

5 He said "Nelly did meet this requirement,"  
6 right? Right?

7 A. Yes, yeah.

8 Q. So he noted that that requirement was  
9 satisfied, right?

10 A. Yes.

11 Q. So Goal 1.3 is the Revenue Growth Target  
12 Number 1, and it says "Revenue attainment of 300,000 by  
13 June 30, 2020."

14 A. Uh-huh.

15 Q. Correct?

16 A. Yes.

17 Q. And is this why you thought you only had  
18 until June 30th, was this section here?

19 A. That's what he explained to me.

20 Q. Even though the rest of these had deadlines  
21 after June 30, right?

22 A. Yes. Yes.

23 Q. Okay. And so this is asking you to attain  
24 revenue of \$300,000 by June 30th, right?

25 A. Yes.

1 Q. And so the expectation wasn't even that you  
2 would hit the entire 1.6 million, right?

3 MR. WILLIAMS: Objection to form.

4 THE WITNESS: Not according to the PIP.

5 BY MR. BARNES:

6 Q. Was it according to some- -- something else?

7 A. The 1.67 -- I mean, 1.6 was never a written  
8 objective.

9 Q. Well, we -- we looked -- we saw earlier where  
10 it was, right?

11 A. I -- I think --

12 MR. WILLIAMS: Objection to the form.

13 THE WITNESS: If I recall Sandy's language, it  
14 was, you know -- so it was not a -- a quota letter that  
15 was issued to me that I have a \$1.6 million of  
16 objective or goal.

17 BY MR. BARNES:

18 Q. So Sandy told you to use \$1.6 million as your  
19 1H target for planning purposes, right?

20 A. For planning purposes, yes.

21 Q. And so how did you interpret that?

22 A. You try -- like I said, as a salesperson, you  
23 try to make as much money as possible, so you try to  
24 hit and sell as much as possible. My goal was more  
25 than 1.6 million, my personal goal.



1 Q. Right.

2 But that's not what Sandy told you, right?

3 A. Well, Sandy asked us to use a number to plan,  
4 right, our pipelines.

5 Q. And Sandy said to use 1.6 million as your 1H  
6 target, right?

7 A. That's what it says on her email, yes.

8 Q. And your PIP told you to sell 300,000 by  
9 June 30th, right?

10 A. That's what it says here, yes.

11 Q. So this PIP was not adding any expectations  
12 that were not already there, right?

13 A. That is if you assume the 1.6 is a written  
14 quota objective. I was never issued an Incentive Plan  
15 Letter with a quota objective. I was a SRAP.

16 Q. But managers still have expectations that  
17 S rep sellers are going to sell, right?

18 A. Of course.

19 Q. And Sandy told you that expectation was  
20 \$1.6 million, right?

21 A. For planning purpose.

22 Q. What's the difference?

23 A. I can buy a lottery ticket and plan to win  
24 it, but I don't always win it. Actually, I never won  
25 it.

1 Q. So Sandy said, "Try to hit 1.6, but it's a  
2 lottery. We don't really care"?

3 A. I wouldn't say that she said, "I don't really  
4 care." I would not put that in her mouth. But  
5 that's -- you know, you should try, like, to target  
6 that dollar amount, but as a -- as SRAP we are not  
7 bonded by a quota objective, and that's why we --  
8 S reps do not have any accounts with an install base.

9 Q. So what do you think your -- your managers  
10 expected of you in the first half of 2020?

11 A. Expected me to sell.

12 Q. How much did they expect you to sell?

13 A. I would not know what they -- besides what --  
14 what Sandy said there for planning purpose.

15 Q. If they said their expectation was that you  
16 would sell \$1.6 million, would you have any basis for  
17 disagreeing with that?

18 A. Yes, I -- I do.

19 Q. What's your basis?

20 A. My basis is until I get a -- a better --  
21 until I get some insight into my accounts and my  
22 territory, I cannot call what my pipeline is going to  
23 be.

24 Q. Right. I didn't ask what your expectation  
25 was. I asked what their expectation was.

1           Would you have any reason to disagree that  
2           their expectation was that everyone on the team sell  
3           \$1.6 million?

4           A.    I would have an objection on the expectation  
5           on SRAPs -- on -- on -- on reps who have the SRAP plan.

6           Q.    And so managers should have just no  
7           expectations at all.

8                   Is that what you're saying?

9           MR. WILLIAMS:  Objection to form.

10          THE WITNESS:  I did not say that.

11          BY MR. BARNES:

12          Q.    But you just said you would object to them  
13          having that expectation for sellers who are S reps.

14          A.    No, I -- I said object to that amount.

15          Q.    So what should the amount have been?

16          MR. WILLIAMS:  Object to the form.

17          THE WITNESS:  I -- if I were the manager, it would  
18          be territory dependent.

19          BY MR. BARNES:

20          Q.    Okay.  So what should they have expected from  
21          your territory in the first half of 2020?

22          A.    I -- I have not thought about that.  I -- I  
23          would say I -- I would expect them to expect me to  
24          sell, sell all that I can, and work really hard at it.  
25          That's what I would have expect them to expect of me.

1           Q.    So what dollar amount do you think would have  
2           been reasonable for them to have expected you to sell  
3           in the first half of 2020?

4           A.    I cannot answer that question.

5           Q.    You can't or you won't?

6           A.    I -- I can't. I mean, because what I know  
7           now, I will -- you know, I'll say \$50,000, right,  
8           because I have lived through the COVID times. But  
9           going in, I have big dreams like all the sellers,  
10          right? I have big dreams like a successful seller that  
11          I've always been, so I did not put a ceiling on myself.

12          Q.    And I'm not talking about ceilings. I'm  
13          talking about floors. And I'm asking what would a  
14          reasonable expectation have been going into 2020 for  
15          you to sell in that territory.

16          MR. WILLIAMS: Objection to form.

17          THE WITNESS: If you're asking my -- if you're  
18          asking an answer based on what I know now happened  
19          during that period of time?

20          BY MR. BARNES:

21          Q.    That wasn't my question.

22          A.    Okay.

23          Q.    My question was going into 2020, what would  
24          have been a reasonable expectation out of that  
25          territory?

1 MR. WILLIAMS: Objection to form.

2 THE WITNESS: I still would have -- going in at  
3 the beginning, I still wouldn't have any idea without  
4 knowing the accounts. Generally -- sorry.

5 MR. WILLIAMS: No. Go ahead, Nelly.

6 THE WITNESS: Generally accounts would have  
7 baselines because IBM had done business with them, so  
8 IBM would have idea of the potentials. When accounts  
9 have no baselines, that means that the expectation is  
10 probably zero, and if you get \$1, that is, you know,  
11 all right, gravy.

12 MR. WILLIAMS: Justin, I was going to say we've  
13 been going over an hour and a half. When you get to a  
14 good spot, if we can stop.

15 MR. BARNES: Yeah, let me get through a little bit  
16 more.

17 MR. WILLIAMS: That's fine.

18 BY MR. BARNES:

19 Q. All right. 1.3, the goal was \$300,000 by  
20 June 30th, and -- and you did not meet that goal,  
21 right?

22 A. Right.

23 Q. 1.4 is Revenue Target Number 2, which was  
24 asking you to achieve 760,000 by July 22nd, right?

25 A. Correct.

1 Q. And so did you read this to say if you hit  
2 the 300,000 by June 30, then you would have to also hit  
3 the 760 by July 22? Is that how you read it?

4 A. Yes. That's how Robert explained it to me.

5 Q. Okay. Got it.

6 And so you -- you obviously did not hit that  
7 goal, right?

8 A. Correct.

9 Q. What was your -- at the time that he gave  
10 this to you, which I guess is the meeting where Robert  
11 gave this to you on June 18th?

12 A. Yes.

13 Q. What was your pipeline on June 18th? Do you  
14 remember?

15 A. I can't remember.

16 Q. Was it zero?

17 A. No, it was not zero.

18 Q. Okay. And then Goal 1.5 is "Customer Meeting  
19 Attainment, ten meetings per week that focus on the CTS  
20 initiatives."

21 You see that?

22 A. I saw that. Yes, I see it.

23 Q. What is CTS?

24 A. That is Client Technical Specialist. That's  
25 my technical teammate.

1 Q. Okay. And did you have ten meetings per week  
2 that focused on the CTS initiatives?

3 A. No, because no one -- because most of the  
4 accounts that I had, they shut down.

5 Q. Did you try to have those meetings?

6 A. Yes, we -- my -- my CTS or my -- my system  
7 architect, we have webinars. We called them, we  
8 emailed, asking for emails. We -- we asking for  
9 meetings. We -- I think we had maybe like one or two  
10 meetings a week that people actually talked to us,  
11 right, not just -- and then doing the webinars, we may  
12 have seven or eight people in those sessions. But --  
13 but I don't think that's my understanding of the  
14 meetings that -- that I got from Robert. They had to  
15 be in person.

16 Q. So under Global Manager's comments --

17 A. Uh-huh.

18 Q. -- just under that on Page 3, it says "Nelly  
19 has been a long time IBM employee and has showed  
20 extreme professionalism during this PIP process."

21 Do you see that?

22 A. Yes, I see it.

23 Q. And you agree with that?

24 A. Yes, I would agree with that sentence, yeah.

25 Q. It goes on to say "Nelly did not meet a

1 majority of the goals outlined in this PIP and will be  
2 separated from IBM on 7/22/20," right?

3 A. Yes. Yes, that's what it says, yeah.

4 Q. And then if you go down to the last page, you  
5 see signed by Robert and Todd on July 17th, right?

6 A. Right.

7 Q. And so is it your understanding that  
8 July 17th is when Robert and Todd met and discussed  
9 your progress on this?

10 A. With me?

11 Q. No, with each other.

12 A. Oh, that, I don't know.

13 Q. Okay.

14 A. Yeah.

15 Q. Is there anything you could have done between  
16 July 17th and July 22nd to meet these PIP requirements?

17 A. No, I -- not with the accounts that I had.

18 MR. BARNES: All right. Let's go off the record.

19 (Brief recess taken.)

20 MR. BARNES: All right. We are back on the record  
21 after a short break.

22 BY MR. BARNES:

23 Q. Ms. Leong, you understand you're still under  
24 oath?

25 A. Yes.



1 Q. Great.

2 Is there anything you feel like you need to  
3 change or clarify about your testimony so far?

4 A. No, I don't think so at this point.

5 Q. Okay. Thank you.

6 All right. Let me pull up the next exhibit.  
7 These are -- were previously marked. Let me pull up  
8 Exhibit 31 first.

9 A. 31. Okay.

10 Q. Yes. Okay. Should be up.

11 A. Okay.

12 Q. Let me know when you have it.

13 A. Okay.

14 Q. This is an email from Robert Cortez to you  
15 dated July 17th, right?

16 A. Yes.

17 Q. This says "Nelly, this notice to confirm our  
18 conversation last night. As discussed, your  
19 performance did not improve to the level required while  
20 you were on the Performance Improvement Plan," right?

21 A. Yes, I see it.

22 Q. And so this suggests that you had a  
23 conversation with Robert on July 16th; is that right?

24 A. Possibly. I can't remember.

25 Q. Okay. So you don't remember what would have

1           been discussed during that July 16th phone call?

2           A.    No, I -- I don't.

3           Q.    Okay.

4           A.    Sorry.

5           Q.    No, that's okay.

6                   It goes on to say "As a result, you are being  
7           separated from IBM. Your last day of work is  
8           July 20th. We will pay you through July 31st" -- I  
9           mean "July 22nd. We will pay you through July 31st,"  
10          right?

11          A.    Yes. I see it, yes.

12          Q.    And is that your understanding of -- of what  
13          happened? Your last day of work was July 22nd, but you  
14          were paid through July 31st?

15          A.    Not at -- according to this, yes, but like I  
16          said, my earlier understanding from him when -- when I  
17          received the PIP was my last day of work is June 30th  
18          and I was paid through July 31st. And I remember  
19          thinking to myself, oh, I got paid for a whole month --

20          Q.    Okay.

21          A.    -- and officially I didn't have to work.

22          Q.    So your impression was once you were not able  
23          to hit that June 30 revenue target, then you just  
24          stopped working?

25          A.    That -- that I would -- that I would be

1 considered failing on my PIP, not stop working, but  
2 failing my PIP; that -- that I was -- I was out, per my  
3 conversation with Robert.

4 Q. Did you stop working as of June -- June 30th?

5 A. No, I didn't. No, I did not.

6 Q. Okay. So you kept working until, what,  
7 July 17th?

8 A. I think I actually worked past that trying to  
9 help close the Raley's deal.

10 Q. So this goes on to say "You've been offered  
11 the Performance Separation Plan, copy attached. You  
12 should thoroughly review the agreement. You will have  
13 30 calendar days post employment to consider and return  
14 the agreement as per the details within the document,"  
15 right?

16 A. Yes.

17 Q. All right. So let's take a look at that  
18 document, which was previously marked as Exhibit 32.  
19 Let me introduce it here.

20 Okay. Should be up now.

21 A. Okay. Okay. Yes, I see it.

22 Q. This is entitled "Performance Separation Plan  
23 Summary Plan Description," right?

24 A. Yes.

25 Q. And this is what IBM was offering you at the

1 time of your termination, right?

2 A. Yes, I believe so, yeah.

3 Q. And it included -- if you see Plan Payments,  
4 it included one month of pay, right?

5 A. Through July 31st, yes.

6 Q. That was your understanding, is that what was  
7 being offered under this PSP was just the payments  
8 through July 31st?

9 A. That's my understanding, yes.

10 Q. Did you ask anyone to clarify that?

11 A. No, I -- I didn't.

12 Q. You ultimately did not accept this, right?

13 A. I did not.

14 Q. Why not?

15 MR. WILLIAMS: I'm just going to object to the  
16 extent you can answer this without disclosing any  
17 attorney-client privileged communications.

18 BY MR. BARNES:

19 Q. And to be clear, I don't -- I'm not asking  
20 you to disclose any attorney-client privileged  
21 communications. I don't want you to tell me anything  
22 you've discussed with your attorneys. I just want to  
23 know why you did not accept this PSP.

24 MR. WILLIAMS: I'm going to state the same  
25 objection.

1 THE WITNESS: I did not accept at the time because  
2 it -- it's not a package that offered me much, so I did  
3 not want to be bind by it -- bind by it -- by it.

4 BY MR. BARNES:

5 Q. Had you known that it was an additional month  
6 beyond July 31st, would that have impacted your  
7 decision?

8 A. No.

9 Q. So is it your understanding that Robert and  
10 Todd were the ones who decided to terminate your  
11 employment?

12 A. I was -- I mean, I wouldn't say that's my  
13 understanding, but that's my speculation --

14 Q. Okay.

15 A. -- that they're the ones, yeah.

16 Q. And is that just because you don't -- you're  
17 not sure who made the decision?

18 A. Correct, because I -- I couldn't -- you know,  
19 even though it's a performance, you know, letter, the  
20 fact that I had 12 days to meet -- I have to meet what  
21 is that goal, right, in order to stay in, and so yeah.

22 Q. Let me ask you this way.

23 Do you know who made the decision to  
24 terminate your employment?

25 A. I don't know that.

1 Q. Okay. Do you know whether -- do you know who  
2 was involved in the decision to terminate your  
3 employment?

4 A. I don't know that.

5 Q. To the extent that it was Robert and Todd who  
6 made that decision, do you have any reason to believe  
7 they were influenced by the people above them?

8 MR. WILLIAMS: Object to the form.

9 THE WITNESS: I -- I -- I won't know that. I can  
10 only say that, right, it was a performance letter. But  
11 Todd was still praising me about the deal that I closed  
12 at Jackson, so I -- so I don't know where, you know,  
13 this is coming from.

14 BY MR. BARNES:

15 Q. Okay. So it sounds like you don't know  
16 whether they were influenced by anyone above them?

17 A. I wouldn't know, yeah.

18 Q. Okay. Did anyone ever say anything to you  
19 about coming back as a contractor at IBM?

20 A. No, no one did.

21 Q. Do you know what happened to your territory  
22 or your accounts after you left?

23 A. I heard -- I heard that someone new joined  
24 the team to cover the -- the -- I don't know if it's  
25 the same account, the territory, Pacific Northwest.

1 Q. Who's that?

2 A. Oh, I don't know the person. I think it's a  
3 new hire.

4 Q. Do you know anything about that person?

5 A. Besides that it's a she, that's what I heard,  
6 and a college grad or something like that.

7 Q. Who did you hear that from?

8 A. I would -- oh, gosh. It could -- it could be  
9 Ginni. It could be Randall. It could be Jack. Those  
10 are the three people I -- I kept in touch.

11 Q. It -- it could be or you did hear that from  
12 them?

13 A. I -- I heard it from one of them. I don't  
14 remember who said it.

15 Q. You heard it from one of those three people?

16 A. That seems to be what I recall, yes.

17 Q. And you said Ginni, Jack, or who?

18 A. Randall.

19 Q. And other than these conversations with  
20 Ginni, Jack, and Randall, do you have any other  
21 knowledge about who was covering your territory or your  
22 accounts after you left?

23 A. No, I don't.

24 Q. Do you know someone named Chris Lawrence?

25 A. Chris Lawrence?

1 Q. Right.

2 A. That name doesn't sound familiar. I mean,  
3 it's -- the name itself is common, so -- but it doesn't  
4 sound familiar as someone I know.

5 Q. Right.

6 A. Yeah.

7 Q. Do you know whether you were the oldest  
8 person on the team or whether there was anyone on the  
9 team older than you?

10 A. I won't know that.

11 Q. Okay.

12 A. Yeah.

13 Q. Jack and Randall and Ginni, are they still at  
14 IBM?

15 A. I don't think Ginni is. I don't think  
16 Randall is either. I don't know about Jack.

17 Q. Do you know why Randall and Ginni left?

18 A. No, I don't. That, they did not share.

19 Q. And how old were you at the time of your  
20 termination in 2020?

21 A. 2020. I have to do my math. July 2020.  
22 50 -- 59, right? '21 would be 60. 59, yes.

23 Q. Okay. How long were you planning on working?

24 A. For as long as I can.

25 Q. You had no retirement plan?



1           A.    No.  I -- I -- I enjoyed working.  I -- I  
2           grew up with a working mom, so -- and I -- I do like  
3           working with customers/clients, right, solving  
4           problems, so I hadn't planned on retiring any time  
5           soon.

6           Q.    And you hadn't even thought about how long  
7           you'd want to work?

8           A.    Oh, I was probably -- I would probably say if  
9           I were to -- if you were to ask, put a number in the  
10          air, at least five, six, seven years.

11          Q.    Past your termination date or from now?

12          A.    Probably from now.  From now.

13          Q.    Okay.

14          A.    Yes.

15          Q.    Got it.

16          A.    You have to be able to collect social  
17          security first, right?

18          Q.    Right.

19          A.    That's 67, best-case scenario.

20          Q.    For now.

21          A.    For now.  By the time I get there, it will  
22          probably be like 72, and then I'll be working until 72.

23          Q.    Who knows.

24          A.    Yeah.

25          Q.    Did you ever record any conversations with

1 any IBM employees?

2 A. Record? No, never.

3 Q. Okay. So in this case you are contending  
4 that you were fired because of your age, right?

5 A. I cannot think of other reasons, even though  
6 it says it in the Performance Plan. As I say, Todd  
7 used me as a model citizen for closing the Jackson deal  
8 in the midst of COVID, so I cannot think of other  
9 reasons.

10 Q. What makes you think that it was your age?  
11 Is it just because you can't think of another reason?

12 A. No. I mean, since I don't know where the  
13 decision came from, so it's hard to -- for me to say,  
14 right? But, you know, there were a couple of  
15 conversations that I had with Robert Cortez that he  
16 gave me the feeling that, you know, you're old and  
17 maybe not as creative.

18 Q. Tell me about those conversations.

19 A. I think the first one was when he highly  
20 suggested for me to talk to his son, who was an inside  
21 salesperson, I believe it was, for the software group.  
22 And he said that, "Oh, you should really talk to my  
23 son."

24 I said, "Oh, what" -- I said, "Oh, you know,  
25 what does he do?"

1                   And he told me he's an inside sales rep for a  
2 software group.

3                   I said, "Oh, what things do they do," you  
4 know.

5                   And he said, "Oh, yeah, you know, they --  
6 they have all these creative ways. I'm telling you,  
7 Nelly," something along that line, you know, "these  
8 young people, you know, they're just really creative."

9                   So that -- when I first heard it, you know,  
10 I -- I just kind of, "Oh, interesting," you know. I  
11 took it as, oh, my fellow, right, teammate suggesting  
12 for me to strategize, right, with someone else.

13                   But then, you know, when he said that, you  
14 know, "these young people," I said, "Okay." I thought  
15 to myself, "How old do you think I am," right?

16                   So -- and then -- but then I -- you know,  
17 talked more about, you know, how he -- his son would  
18 do, you know, what these creative things are, and it  
19 was basically using an IBM, you know, sales tool that  
20 the storage sales team did not have.

21                   So I told him, "Oh, okay."

22                   So then I -- you know, I didn't have any  
23 conversation with his son, and then I don't know when  
24 he brought it up again. I -- I think -- let me step  
25 back.

1           The first time he said it when I found out  
2           that, you know, the software group actually has more  
3           tools than storage sales, I said, "Oh, okay." I know  
4           that storage sales division was trying to roll out  
5           those some -- same kinds of tools to -- to us.

6           And I said, you know, "I didn't need to talk  
7           to your son yet."

8           And he actually got a little upset that I  
9           didn't want to talk to his son right away, but then,  
10          you know, I didn't think much of that because I just  
11          figured maybe he would -- he would -- he was just  
12          really passionate about it.

13          And then he brought it up again another time,  
14          so it kind of give me a little question in my head  
15          that, you know, are people thinking that I'm old,  
16          right, because it came from my peer, so...

17          Q.    So was this before Robert was your manager?

18          A.    Yes. The first conversation was, yes.

19          Q.    When was that?

20          A.    I think it was actually -- this was  
21          actually -- I can't remember exactly. I think --  
22          because the first time I met him was at the kickoff the  
23          second half of 2019. I think it might have been, you  
24          know, during that trip that he mentioned it.

25          Q.    Okay.

1           A.    And that was also the same trip, same  
2           meeting, kickoff meeting that Todd announced that I --  
3           I had 35 years, right? That was to the bigger -- you  
4           know, the whole team again. So -- I -- I have 35  
5           years, you know, this year -- that -- that year.

6           Q.    And so when did Robert mention this the  
7           second time?

8           A.    The second time was -- I cannot remember  
9           exactly, but I think it was after Sandy left when we  
10          didn't have a manager, so Amy was sitting in as a  
11          software sales executive. And I noticed that Robert  
12          started sitting in on my cadence call with Amy, and  
13          then that got brought up again, yeah.

14          Q.    Okay.

15          A.    I mean, at that time, the second time he  
16          didn't -- he didn't say, you know, "Oh, these young  
17          people," right? He just said, you know, "You should  
18          talk to my son." He didn't use the same description,  
19          right?

20          Q.    Got it.

21          A.    Yeah.

22          Q.    So he -- he made the "young people" comment  
23          around July of 2019?

24          A.    Yes, yeah.

25          Q.    Okay. And how old is Robert?

1 A. I don't know.

2 Q. Do you know whether he's older or younger  
3 than you?

4 A. I -- I -- I'm going to guess that he's  
5 younger than me.

6 Q. Why do you say that?

7 A. I think at that time his son was 25 and my  
8 son was -- at the time was about 25. But I waited for  
9 a long time to get married to have a child, and my -- I  
10 seem to recall that, you know, he did not wait 13  
11 years, dated the same person for 13 years before he got  
12 married.

13 Q. Okay.

14 A. Yeah, so I'm -- I'm -- so I'm -- I'm  
15 guessing.

16 Q. Did you ever hear anyone else make comments  
17 about age or young people or anything like that?

18 A. Just it -- it's not specific to storage  
19 sales, just that I've heard, you know -- you know,  
20 when -- when people got together, right, you know,  
21 in -- in meetings or get together, "Oh, IBM's practice  
22 is to hire younger people." And the client executives  
23 or client managers whom I supported, they're all pretty  
24 much college grads.

25 Q. So who did you hear say that IBM's practice

1 was to hire younger people?

2 A. It -- it -- you know, it's just like, you  
3 know, when people are just chatting, right, in a -- in  
4 a -- in a -- in a -- in a conference or in a meeting or  
5 things like that, right? So I cannot tell you who said  
6 it. I can't even tell you who -- who were in those  
7 conversations, but --

8 Q. Can you -- I'm sorry. Go ahead.

9 A. No.

10 Q. Can you tell me when you heard that?

11 A. Oh, gosh. I -- a specific time period, no, I  
12 cannot, you know. It had to be within the last, you  
13 know, couple of years because --

14 Q. Why do you say that?

15 A. Because I never thought of myself as old,  
16 right, so, you know, those statements did not, you  
17 know -- yeah, so I -- I can't tell you, like, when. I  
18 mean, it's not -- I guess it's also in the news too,  
19 right? Those I did not hear. I just kind of read.

20 Q. So sometime within the last couple of years  
21 of your employment, someone said something about IBM  
22 hiring younger people, but you don't know who?

23 A. No. I mean, you know, you know when people  
24 are kind of, like, getting together, right, where  
25 there's a conference or big meeting and, you know --

1 and then you just hear a part of the conversation.

2 Q. But I want to be clear about this.

3 You -- you cannot name a particular person  
4 who said this?

5 A. No, I cannot.

6 Q. And you cannot identify a particular time  
7 when you heard this?

8 A. I cannot.

9 Q. Okay. Any other comments you heard about  
10 age?

11 A. Not that I can think of at this point.

12 Q. Did Todd ever say anything inappropriate  
13 about age?

14 A. Not that I can think of at this moment. I  
15 don't have a whole lot of conversations with Todd. I  
16 didn't have, yeah.

17 Q. Did you ever hear Amy or Sandy say anything  
18 about age?

19 A. I can't think of it right now.

20 Q. So you mentioned something about it being in  
21 the news.

22 What are you talking about?

23 A. Once in a while you just see it, you know, go  
24 through the headlines, oh, you know, IBM is in  
25 litigation or something, right?



1           Q.    Can you tell me any particular article where  
2           you saw?

3           A.    No, I -- I usually don't pay attention to  
4           those. You know, I usually just see the headline and I  
5           say, "Oh, okay."

6           Q.    Can you tell -- can you tell me when you saw  
7           that?

8           A.    Oh, this is probably, you know -- I -- I have  
9           no -- I cannot tell you.

10          Q.    And was it about -- were those articles about  
11          age?

12          A.    I -- I -- I didn't read the articles. I  
13          mean, you know, that's what the headline said.

14          Q.    What did the headline say?

15          A.    Something along the line of IBM in a lawsuit  
16          for age discrimination.

17          Q.    Do you know if those lawsuits were talking  
18          about anything related to storage sales?

19          A.    I don't know. I did not read the articles.

20          Q.    Okay. Is there anything else that made you  
21          think that your age had something to do with your  
22          termination?

23          A.    No, just -- just kind of, right, process of  
24          elimination.

25          Q.    Did you ever hear the phrase "early

1 professional hire"?

2 A. Early professional hire, I don't think so.

3 Q. Did you ever hear about a millennial core?

4 A. I don't think so.

5 Q. Did you ever hear anyone talk about  
6 millennials?

7 A. Yes.

8 Q. Tell me about that.

9 A. Well, I have one.

10 Q. I mean, did you ever hear anyone at IBM talk  
11 about millennials?

12 A. Oh, I don't think so. I mean, not in my  
13 conversations.

14 Q. Have you ever heard the phrase "dino babies"?

15 A. Dino babies?

16 Q. Yes.

17 A. I don't think so.

18 Q. Did you ever hear about any investigation by  
19 the EEOC into age discrimination at IBM?

20 A. Besides the headline that I saw, but --

21 Q. Right.

22 A. Yeah, no. Oh, sorry.

23 Q. Okay. I want to make sure I understand your  
24 answer because you just said, "Yeah, no."

25 So did you ever hear anything about an EEOC

1 investigation into age discrimination at IBM?

2 A. Yes, I have read the headlines.

3 Q. When?

4 A. Oh, I think different points in time. I  
5 mean, they -- I cannot tell you when. I think there --  
6 I think there was one, like, just -- just a few months  
7 ago. I cannot tell you for sure. I -- I subscribe to  
8 Apple News, so I get headlines coming from so many  
9 sources.

10 Q. Did you ever get interviewed by the EEOC as  
11 part of that investigation?

12 A. No.

13 Q. Do you know whether that investigation had  
14 anything to do with storage sales?

15 A. I have no idea.

16 Q. Who do you think was the bad guy at IBM?

17 MR. WILLIAMS: Objection to form.

18 THE WITNESS: I -- how do you define "bad"?

19 BY MR. BARNES:

20 Q. Let me ask it this way.

21 Do you think Todd wanted to fire you because  
22 of your age?

23 A. I won't know that. I don't -- you know, I --  
24 I can't read his mind.

25 Q. What about Robert? Do you think he wanted to

1 fire you because of your age?

2 A. Again, I don't know that.

3 Q. All right. Let's take a look at Exhibit 61.

4 (Whereupon Exhibit 61 was marked for  
5 identification, a copy of which is attached hereto.)

6 BY MR. BARNES:

7 Q. Let me know when you have it.

8 A. Yes, I have it.

9 Q. I believe this is an offer letter from KPMG  
10 to you, right?

11 A. Yes.

12 Q. And you're currently still working for KPMG?

13 A. Yes.

14 Q. This offer letter says that they offered you  
15 the position of Manager, Transformation Delivery,  
16 right?

17 A. Yes.

18 Q. Is that the position you still hold?

19 A. Yes.

20 Q. What do you do in that role?

21 A. I consult clients who are going through a  
22 transformation project, whether it's business processes  
23 or technology transformation, you know, different  
24 things like that, and I specifically -- my role is a  
25 project manager.

1 Q. Okay. And this suggests a start date of  
2 March 15, 2021.

3 Is that when you started?

4 A. Yes.

5 Q. And it says you had an annual salary of  
6 \$165,000, right?

7 A. Yes.

8 Q. And I think at some point it went up to  
9 \$168,000; is that right?

10 A. Yes.

11 Q. What is it now?

12 A. What is it now? Oh, I don't remember. I --  
13 yeah. I know I got -- I -- I remember I -- that I have  
14 gotten two raises already, so -- since I started.

15 Q. Do you like working at KPMG?

16 A. Yes, I do.

17 Q. Is -- and so it sounds like that's more of a  
18 consulting role than a sales role?

19 A. Yes.

20 Q. Do you make commissions?

21 A. No, I don't.

22 Q. What about bonuses?

23 A. Yes.

24 Q. What type of bonuses are you eligible for?

25 A. Generally that's based on performance, and

1           your performance is tied to your utilization.

2           Q.    Utilization being how much you bill?

3           A.    Exactly.

4           Q.    I'm familiar with that.

5           A.    Okay.  Yeah.

6           Q.    Have you been -- have you been paid bonuses  
7           from KPMG?

8           A.    Yes, I have.

9           Q.    Do you know how much?

10          A.    So the bonus is annual, annual according to  
11          their fiscal year.  So I got one.  I think it was  
12          September when it close.  It was -- it might have been  
13          \$5,000, 7,000.  I can't remember.

14          Q.    Okay.  And you also get benefits?

15          A.    Yes, I do.

16          Q.    How do the benefits at KPMG compare to IBM's  
17          benefits?

18          MR. WILLIAMS:  Objection to the form.

19          THE WITNESS:  It's -- it's not apple to apples.  
20          KPMG, they have no stock options, right, because they  
21          don't have stocks, so -- so -- so it's hard to compare  
22          one to one.

23          BY MR. BARNES:

24          Q.    What about the medical insurance?  How does  
25          that compare?

1           A.    So I cannot remember what the -- I can tell  
2           you, compared to my COBRA, KPMG's medical is lower.  
3           The benefits is better.

4           Q.    But compared to pre-COBRA when you were still  
5           at IBM? You don't know?

6           A.    I can't remember how -- yeah, I cannot  
7           remember how much I was paying.

8           Q.    And you got stock at IBM; is that right?

9           A.    Stock options, yeah. You can -- like a  
10          certain percentage of your -- I think only salary or  
11          maybe bonus or commission too, you can buy stocks at  
12          15 percent off.

13          Q.    Did you do that?

14          A.    Yes, I did.

15          Q.    How much stock did you buy?

16          A.    Oh, I -- I generally maxed it out every pay  
17          period, along with the commissions.

18          Q.    And was that stock or a 401(k)?

19          A.    Stock.

20          Q.    Okay. Was everyone eligible to buy stock?

21          A.    I don't know whether it was changed for,  
22          like, new hires, whether they'd have to go through a  
23          certain period, but yes, everyone is eligible.

24          Q.    And that was every pay period you were  
25          eligible to --

1 A. Yes.

2 Q. Okay. Since getting your job at KPMG, have  
3 you applied for -- for any other jobs?

4 A. Not since, yeah. I mean, before KPMG, yes, I  
5 had. I did, yes.

6 Q. But since March 15, 2021 when you got that  
7 job, you haven't applied for any other jobs?

8 A. No, I have not.

9 Q. You're satisfied with where you're at now?

10 MR. WILLIAMS: Objection to the form.

11 THE WITNESS: Right now there's no reason for me  
12 to look for another job because, you know, I'm  
13 contributing and I'm also growing, right, with the  
14 company, so...

15 BY MR. BARNES:

16 Q. So after your termination, do you recall when  
17 you applied for your first job?

18 A. Oh, I think my first was trying to become a  
19 contract tracer -- a contact tracer for COVID because  
20 there were not a whole lot of openings around because  
21 of the shutdown. So I -- I pretty much immediately did  
22 that, right? I signed up to be a -- a contact tracer.

23 The other thing was when kids was -- well, I  
24 should say when school districts were debating whether  
25 kids were going back to school and teachers were saying



1       they didn't want to go back to school, so I applied to  
2       be a sub, substitute teacher. So just whatever --  
3       whatever opportunities that I thought would open up at  
4       that time due to the shutdown.

5           Q.    You applied for the contact tracer position  
6       before your termination, right?

7           A.    I -- before my -- before -- after -- after I  
8       know that I did not meet my June 30th goal, that I knew  
9       that I was going to be laid off, but I think it was  
10      sometime in, like, late July that I applied.

11          Q.    Take a look at Exhibit 62.

12          A.    Okay.

13                   (Whereupon Exhibit 62 was marked for  
14      identification, a copy of which is attached hereto.)

15      BY MR. BARNES:

16          Q.    Is this the contact tracer position?

17          A.    Hold on one second. Excuse me. Yeah, that's  
18      the contact tracer.

19          Q.    It looks like you applied on June 22nd.

20          A.    Okay. I don't remember that, but yeah,  
21      that -- yeah. I did not -- I did not remember that I  
22      applied that early.

23          Q.    Did you get that job?

24          A.    No.

25          Q.    If you would have gotten it, would you have

1 still tried to meet the goals in the PIP?

2 A. Oh, yes.

3 Q. You would have just done that at the same  
4 time?

5 A. So my understanding of contact tracer at that  
6 time, right, you know, you call people in the evening.  
7 Then, yeah, possibly I would do that in the evening,  
8 yes.

9 Q. Do you also have a -- have a job selling  
10 insurance?

11 A. I don't have a job selling insurance. I have  
12 an insurance license.

13 Q. Do you sell insurance with that license?

14 A. I sold I think -- I can't even say sold. I  
15 bought one for my son and I bought one for my daughter,  
16 and that's it. So I don't have a business with my  
17 insurance license, if that's what you're asking.

18 Q. You're licensed in California, New Jersey,  
19 and New York?

20 A. Yes.

21 Q. And you -- do you do anything other than life  
22 insurance?

23 A. No, I don't. Oh, no, with the insurance  
24 license I can do annuity too, but I don't have a  
25 business of that either.

1 Q. Are you affiliated with any sort of insurance  
2 company?

3 A. Yeah, I'm affiliated with -- affiliated with  
4 Wealth Financial Group, so they only have independent  
5 agents, and -- and I can -- I -- the reason I got the  
6 license is that's the only way that I can get training  
7 to learn how to -- it's all about wealth protection,  
8 right? So in order for me to get training, you have to  
9 be a licensed agent and you have to be affiliated with  
10 them, so that's why I signed up.

11 Q. When did you sign up with WFG?

12 A. Oh, probably 2017 or '18, yeah, but I did not  
13 do anything for a long time with them because I just  
14 wanted to listen to their, you know, training  
15 materials.

16 Q. When did you start the training?

17 A. Well, the training is -- is -- so to get the  
18 license, it's just a online -- you know, online program  
19 that you sign up. Their training is they have rolling  
20 training every Monday, Wednesday night at 7:00 p.m. and  
21 Saturday at 10:00 a.m. It's still the same schedule,  
22 never changes.

23 Q. And how often do you attend that?

24 A. I have not attended for probably like --  
25 well, I attended some after I left IBM because I

1 thought, oh, since I have a license, couldn't get any  
2 jobs at that time, so I said maybe I can, you know, go  
3 into insurance.

4 So I attended more trainings at that time,  
5 like probably from, like, August through January,  
6 right? But then once I start -- once more technology  
7 jobs opened up, so I focused more on applying for those  
8 instead.

9 And -- and the training, because it happens  
10 three times a week, after about six weeks, it's the  
11 same thing. So you -- you know, you pretty much don't  
12 need to go back and listen to it.

13 Q. When did you get your license?

14 A. I want to say either -- I think maybe early  
15 2018 -- I -- I can't remember -- or 2017. I got it --  
16 I -- I -- we got it because we were working with them  
17 on our own life insurance policies.

18 Q. How long did it take you to get your  
19 insurance license?

20 A. What do you mean by "how long"?

21 Q. Well, did you have to take classes?

22 A. It -- it's just one online class; that once  
23 you sign up, I believe they give you three months to --  
24 you know, they start the clock. Once three months is  
25 over, you -- you know, you have to pay again if you

1 don't finish. And then -- so I did that, but I didn't  
2 take the test right away because you have to pass a  
3 test, so that went on for a few more months before I  
4 finally took a test.

5 Q. And -- and you said that you have only sold  
6 policies to your son and your daughter; is that right?

7 MR. WILLIAMS: Objection to the form.

8 THE WITNESS: I -- I wouldn't even say I sold. I  
9 paid for it. I bought it for them so I could help them  
10 get started on how to save money.

11 BY MR. BARNES:

12 Q. Okay. Have you sold insurance to anyone  
13 else?

14 A. No, I have not.

15 Q. Have you tried?

16 A. Have I tried? I have mentioned it to my  
17 brothers about, you know, IUL.

18 Q. Anyone else?

19 A. No.

20 Q. Did you try to sell any between your  
21 termination from IBM and starting at KPMG?

22 A. Did I try? I -- so the company that -- that  
23 my license is affiliated with, right, their model is --  
24 is -- is to try to get more people to join your team  
25 rather than, like, selling. So I wasn't active. No, I

1 wouldn't say that. I -- that I tried to sell. I mean,  
2 I -- I tried to sell, but more importantly tried to see  
3 if people might be interested in the business during  
4 the time that I was laid off.

5 Q. Were you able to recruit anyone under your  
6 hierarchy during that time period?

7 A. I recruited one, and then she never renewed  
8 again. She dropped out.

9 Q. All right. Take a look at Exhibit 63.

10 A. Sure.

11 (Whereupon Exhibit 63 was marked for  
12 identification, a copy of which is attached hereto.)

13 BY MR. BARNES:

14 Q. Is this the application to be a substitute  
15 teacher?

16 A. Yes, it was.

17 Q. So this is dated August 17, right?

18 A. Yes. Yes.

19 Q. And do you remember whether you applied for  
20 any other jobs before this other than the contact  
21 tracer job?

22 A. I can't recall that I did, because a lot of  
23 the places was shut down, so -- and not hiring.

24 Q. All right. Let me show you Exhibit 64.

25 A. Okay.

1 (Whereupon Exhibit 64 was marked for  
2 identification, a copy of which is attached hereto.)

3 BY MR. BARNES:

4 Q. This is an email dated January 14, 2021 --

5 A. Yes.

6 Q. -- related to an Amazon position, right?

7 A. Yes.

8 Q. So I take it you applied for this Glob- -  
9 Global Segment Lead Storage position at Amazon?

10 A. Yes. I applied to multiple positions at  
11 Amazon.

12 Q. When is the first time you submitted an  
13 application to Amazon?

14 A. I would probably say might have been like  
15 October/November time frame or maybe later. I -- I  
16 can't remember.

17 Q. Okay.

18 A. I was sending in, you know, to job sites,  
19 right, so different companies, job sites.

20 Q. What is -- did you apply for any sales  
21 positions between being fired from IBM and joining  
22 KPMG?

23 A. Not specifically. The reason for that is at  
24 that time my skills are mostly around storage, and  
25 because of my loyalty towards IBM, I wasn't going to go

1 work for a competitor, so I did not go apply for a  
2 storage sales position with EMC or Dell or anyone like  
3 that.

4 Q. Did anyone at IBM tell you not to do that?

5 A. Not that I recall.

6 Q. So you didn't look for any positions that  
7 were comparable to the position you had at IBM.

8 Is that fair?

9 MR. WILLIAMS: Objection to the form.

10 THE WITNESS: How -- how do you define  
11 "comparable"?

12 BY MR. BARNES:

13 Q. I guess sales position with a technology  
14 company.

15 A. Sales position with a technology company. I  
16 did not apply specifically for a sales position with a  
17 technology company, not that I recall I did, but I'd  
18 consider it.

19 Q. What -- what do you mean?

20 A. Well, as I mentioned, my skills at that time  
21 was storage, right? I have a lot of experience in --  
22 in storage, and -- and -- and a lot of the technology  
23 companies' openings more software centric. So unless I  
24 want to take my experience and skills to a competitor,  
25 then, you know, I wanted to, you know, expand myself



1 and try something, you know, totally different from  
2 sales.

3 Q. Okay. So you made the decision after you  
4 left IBM that you were looking for something completely  
5 different than sales?

6 MR. WILLIAMS: Objection to form.

7 THE WITNESS: I -- I wouldn't say that. It's just  
8 that, you know, I did not want to go work for a  
9 competitor, period, right, so definitely not a storage  
10 competitor. And it took me a while to apply to Amazon,  
11 right, knowing that they also compete against IBM. But  
12 the positions that I applied, yeah, is -- it wasn't the  
13 Cloud business, per se, and still has storage -- like,  
14 for instance, this one still has a lot of storage  
15 content.

16 BY MR. BARNES:

17 Q. "This one," you're referring to Amazon?

18 A. Yeah, yeah, Global Segment Lead Storage.

19 Q. I'm not trying to put words in your mouth. I  
20 thought you just said you decided you wanted to try  
21 something different other than sales.

22 Is that not what you said?

23 A. Well, not -- not so much that different from  
24 sales, but -- what's the best way to explain my mindset  
25 back then, right? I was trying to look for something

1 that will allow me to expand on my skills, not just a  
2 job that my -- my skill would fit for, meaning a --  
3 a -- a position that have more requirements than just  
4 storage sales.

5 It's almost like instead of just a, you  
6 know -- yeah, I don't know how to explain it, you know,  
7 my mindset at the time. You know, I cannot explain it  
8 to you. I just knew that I didn't want to work for a  
9 competitor.

10 Q. Because you felt loyalty to IBM?

11 A. Yes.

12 Q. Even though you were suing IBM at the same  
13 time?

14 A. Yes. I still have good friends at IBM.

15 Q. So other than Amazon, what other companies do  
16 you remember applying to, other than Amazon and the  
17 contact tracer and the substitute teacher position?

18 A. Because I applied to, I think, at least three  
19 positions at Amazon, and then -- you know, and then  
20 subsequently the KPMG, everything happened so fast and  
21 so condensed, I did not apply to anything else.

22 Q. Got it.

23 So you had the contact tracer, the substitute  
24 teacher, the three positions at Amazon, and then KPMG.

25 Those are the applications you submitted?

1 A. Yes.

2 Q. Okay. Got it.

3 Between your termination from IBM and  
4 starting work at KPMG, did you go on any vacations?

5 A. No.

6 Q. Did you purchase any vehicles?

7 A. No.

8 Q. Or any real estate or anything like that?

9 A. No.

10 Q. So IBM has procedures for employees to report  
11 suspected age discrimination, right?

12 A. I was not aware of that.

13 Q. You didn't know whether you could report  
14 internally allegations of age discrimination?

15 A. No, I did not know that.

16 Q. Are you familiar with the Business Conduct  
17 Guidelines?

18 A. Yes, I'm familiar with that.

19 Q. What are those?

20 A. That's basically how we're supposed to  
21 conduct ourselves either with each other or with  
22 others, right, our clients and customers.

23 Q. And you had to do training every year on the  
24 Business Conduct Guidelines, right?

25 A. Yes.

1 Q. Take a look at Exhibit 65, please.

2 (Whereupon Exhibit 65 was marked for  
3 identification, a copy of which is attached hereto.)

4 THE WITNESS: I have it open.

5 BY MR. BARNES:

6 Q. This is a copy of the Business Conduct  
7 Guidelines, right?

8 A. I don't know what year this is from. Do  
9 you -- do you know?

10 Q. If you go to the very last page --

11 A. Okay. It's 2018, I think this says.

12 Q. The copyright is 2018, right?

13 A. Okay.

14 Q. Is that right?

15 A. That's what it says, yes.

16 Q. And -- and you're familiar with this  
17 document?

18 A. I'm fam- -- familiar with this document, but  
19 we also have, like, interactive modules that we go  
20 through. That's -- that one is more -- yeah.

21 Q. Does the interactive modules say anything  
22 about reporting potential wrongdoing?

23 A. Yes, potential wrongdoing, yes.

24 Q. So go to Page 8 of the BCG, please.

25 You see Section 1.3?

1 A. Yes.

2 Q. It says "IBM expects IBMers like you to  
3 report potential wrongdoing whether a violation of the  
4 BCGs or other unethical or unlawful conduct involving  
5 IBM," right?

6 A. Yes.

7 Q. It says "If you are aware of or suspect a  
8 violation of the BCGs or other unethical or unlawful  
9 conduct, immediately report it through any of IBM's  
10 communication channels," and then it lists a variety of  
11 channels you can report through, right?

12 A. Yes.

13 Q. What -- did you not think that suspected  
14 discrimination would be a violation of the BCG or  
15 unethical or unlawful conduct?

16 MR. WILLIAMS: Object to the form.

17 THE WITNESS: So in -- in the interactive training  
18 modules, if I recall correctly, you know, it's always  
19 about sexual misconduct, you know, bullying, you know,  
20 things like that. I don't recall anything that talked  
21 about age discrimination.

22 BY MR. BARNES:

23 Q. Did you feel like you were being  
24 discriminated on account of your age before your  
25 termination?

1           A.    I don't know how to answer that.

2           Q.    Let me ask it this way.

3                   When is the first time you felt like you were  
4 being discriminated against on the basis of your age?

5           A.    I -- I suppose the day that I got the PIP,  
6 because then -- then you -- you know, I went back and  
7 go, oh, maybe that's why, you know, accounts -- right,  
8 the accounts that I have had and I have had success and  
9 terrific relationship with customers got taken away  
10 from me because I'm not as valued anymore.

11                   So, you know, so it's -- it's just kind of --  
12 I don't -- I don't know how to, like, give you specific  
13 examples, because I don't understand why, right, I got  
14 the PIP besides what it says on the letter while, you  
15 know, the -- throughout the year the reviews that I  
16 got, you know, the comments, right, it was more  
17 encouraging and supportive than "you're not  
18 performing," so I don't know what other reasons I have.  
19 I don't know what to say to you on that.

20           Q.    You never reported internally any complaints  
21 of age discrimination, right?

22           A.    No, I -- like I said, I didn't think that  
23 that was one that is -- that you report on.

24           Q.    The BCGs prohibit age discrimination, right?

25           A.    I don't --

1 MR. WILLIAMS: Objection to form.

2 THE WITNESS: I -- I don't know. Like I said, the  
3 training I recall did not cover age discrimination.

4 BY MR. BARNES:

5 Q. Did you ever read the Business Conduct  
6 Guidelines?

7 A. Yes, I did.

8 Q. Take a look at Page 12.

9 A. Whoops, sorry. Okay.

10 Q. So this says that IBM prohibits age  
11 discrimination, right?

12 A. Yes, that's there, yeah.

13 Q. Okay. Was there any sort of party or  
14 celebration or anything like that to celebrate your  
15 35th anniversary?

16 A. No, there wasn't.

17 Q. Just the announcement by Todd?

18 A. And -- and -- and circulating, you know, via  
19 email.

20 Q. Are you contending in this lawsuit that your  
21 termination from IBM caused you to suffer emotional  
22 distress?

23 A. Yes.

24 Q. Tell me about the emotional distress that you  
25 suffered.

1           A.    I was hoping that we don't have to go there.

2                   I have become so self-conscious of my age to  
3   a point that I don't want people to know that I have  
4   three kids, definitely not one who's 27 years old. So  
5   it -- professionally, outside my friends, I don't share  
6   anything about my family, about my kids, because I  
7   don't want people to, once again, mathematically ask,  
8   "Oh," you know, "you're this age?"

9                   And, you know, there was an incident, right?  
10   One of my peer managers left a project, and I called  
11   her to say, you know, "Hope everything's okay," and she  
12   told me that, oh, she had to find an internal job so  
13   that she won't have to travel, because as consultants  
14   you're expected to travel and she has a young kid.

15                  And we started talking about kids, and she  
16   asked me, "Oh, do you have any kids?"

17                  And I took a few seconds to answer, and I  
18   said, "I have two," because I didn't want her to ask  
19   me, "Oh, how old are they" and to say that I have a  
20   27-year-old.

21                  So I can't -- I can't even be proud of my  
22   kids. I cannot have a personal relationship with  
23   people I work with because I don't want to share  
24   anything.

25                  I -- I -- I run the -- excuse me. I run



1 quite a few meetings, you know, with partners, and one  
2 of them is Monday morning at 8:30, and I always ask  
3 people, "How was your weekend?" You know, "What did  
4 you do?"

5 And then occasionally people will turn the  
6 question on me and say, "Oh, how was your weekend?  
7 What did you do?"

8 Even though I have spent, like, the greatest  
9 weekend going to my daughter's volleyball tournament,  
10 or there was one weekend that my son got engaged and we  
11 spent a whole weekend with him and his fiancée, I  
12 basically just said, "Oh, I didn't do anything. I just  
13 kind of lounged around. Yeah, those are the best  
14 weekends because I didn't do anything."

15 And I find that to be -- I'm so ashamed that  
16 I have to go through that and feel guilty of having  
17 kids, grown kids, when I should be proud of them for  
18 what they have accomplished. That's how I feel from  
19 this event from IBM. I'm sorry.

20 Q. Have you sought treatment or spoken to a  
21 therapist about it?

22 A. No, I have not.

23 Q. Have you considered doing that?

24 A. I don't know. I mean, I don't know.

25 Q. So I take it then you haven't been prescribed

1 any medication for the emotional distress you're  
2 suffering?

3 A. No. I mean, I -- I have not because I  
4 haven't seen a doctor for -- for that. I mean, I have  
5 seen two different -- I have seen a doctor for shoulder  
6 pain, right? That was nothing physical. I went to  
7 acupuncturist. I went to acupuncturist to relieve my  
8 shoulder pain due to -- you know, due to, like, knots,  
9 stress that I -- but that -- but I didn't go to see --  
10 talk to a therapist.

11 And I -- you know, I -- I am trying to -- I'm  
12 trying to put the IBM incident behind me, but at the  
13 same time, it is hanging over my head while I interact  
14 at KPMG with anyone professionally.

15 Q. Before your termination, previously in your  
16 life have you ever experienced any emotional distress,  
17 any anxiety or depression?

18 A. No. Even when I was -- oh, sorry.

19 Q. No, go ahead.

20 A. Even when I was at IBM, I was so proud to  
21 share my kids' accomplishments, my kids, what they're  
22 up to, what we're up to. And now people -- a lot of  
23 the professionals in a professional setting, probably  
24 they may not even know that I'm even married.

25 Q. You haven't had any traumatic experiences in

1 your life that caused you to suffer emotional distress?

2 A. No.

3 Q. Never seen a therapist or psychiatrist or  
4 psychologist previously?

5 A. No. I didn't cry this much when my mom died.

6 Q. So you think that the termination from IBM  
7 caused you more emotional distress than your mother's  
8 death?

9 A. Yes.

10 Q. Were you close with your mom?

11 A. Very much so, but she was living in a nursing  
12 home in New York City during COVID, and she hated  
13 living in a nursing home. She was there like three  
14 years before that, and she often spoke of that, "I'm  
15 ready to go." So the day she died, I know that she  
16 probably would think that she's in a better place.

17 Q. Have you spoken with anyone else who is  
18 bringing any sort of age discrimination claim against  
19 IBM?

20 A. No.

21 Q. Who is -- let me make sure I get the name  
22 right -- Deanna Trenham -- Trenham?

23 A. She was a customer when I was with McKesson,  
24 and we became friends.

25 Q. You still friends with her?

1 A. Yes, I am. We are, yes.

2 Q. And you've spoken with Deanna about your  
3 claims against IBM?

4 A. No. Well, no.

5 Q. Okay. So what would she know about the  
6 impact of IBM's mistreatment on you?

7 A. She -- she would know that I'm -- I'm -- I  
8 was -- I was very upset about it. I -- that I was --  
9 you know, that I'm, you know, trying to do the best I  
10 can to move on.

11 Q. Do you know -- do you know any other sales  
12 representatives at IBM who had been placed on  
13 Performance Improvement Plans?

14 A. A friend of mine probably -- my gosh, this  
15 has got to be at least six, seven years ago maybe,  
16 maybe five, six years ago -- I can't remember -- she  
17 was placed on a Performance Plan for like six months.

18 Q. What type of job did she have?

19 A. She was a power server specialist, so the --  
20 the server side.

21 Q. Okay. How old is she?

22 A. Oh, I -- I don't know. I have -- I don't  
23 know.

24 Q. Around the same age as you?

25 A. Probably, because she has kids my age.

1           Q.    Do you know anyone else at IBM who's been put  
2           on a PIP?

3           A.    Not that I can think of, because usually you  
4           just hear that someone is gone, right, since I'm  
5           usually with customers. So we don't have an office to  
6           go to that you can talk about things, you know, next to  
7           the water cooler, so I don't hear a lot of things.  
8           I -- I did not hear a lot of things.

9           Q.    So do you know how long PIPs typically would  
10          last at IBM?

11          A.    My understanding is it is supposed to help  
12          you actually improve, right, and then it could be three  
13          to six months to demonstrate that, you know, hey, we  
14          tried everything.

15          Q.    What's that understanding based on?

16          A.    Just based on, like, my friend who was -- was  
17          put on PIP. She was put on PIP because she did not  
18          make her numbers the previous half. And then she was  
19          put on PIP, I think, might have been like halfway  
20          through the first quarter when her pipeline wasn't that  
21          strong, and then -- and then her PIP ended, like, in  
22          either June or July.

23          Q.    And -- and she completed the PIP?

24          A.    She completed the PIP, meaning she went  
25          through the whole time?

1 Q. Did she get fired?

2 A. She -- she -- yeah, she was let go.

3 Q. And was it because she did not complete the  
4 PIP?

5 A. That was my understanding. She missed it by  
6 like \$10,000 or \$15,000, at least that's what she told  
7 me.

8 Q. Did she report to different managers?

9 A. Yeah, she did.

10 Q. Okay. So any other basis for your  
11 understanding that PIPs usually last three to six  
12 months?

13 A. It's just based on, you know, what I've  
14 heard, yeah.

15 Q. From who?

16 A. It's not from a particular person. I mean,  
17 I -- I think, you know, sometimes at these big, like,  
18 meetings they may say, you know, IBM has such a thing  
19 as PIP. I -- I cannot remember where I might have  
20 heard it, and I -- frankly, I never thought of it  
21 because I never thought that I would be put on a PIP  
22 ever.

23 Q. Okay. So you can't -- you can't think of who  
24 would have said that PIPs last three to six months or  
25 when you would have heard that?

1 A. Yeah, I cannot say, you know.

2 Q. Okay. Any other basis for your belief that  
3 PIPs typically last three to six months?

4 A. I -- I guess really just based on the --  
5 the -- the name, right? Performance improvement is,  
6 you know, having a way to improve.

7 Q. Okay. Let's take a look at Exhibit  
8 Number 66.

9 A. Okay.

10 (Whereupon Exhibit 66 was marked for  
11 identification, a copy of which is attached hereto.)  
12 BY MR. BARNES:

13 Q. So you recently produced a number of journal  
14 entries, or your counsel recently produced --

15 A. Yes.

16 Q. -- last night a number of journal entries to  
17 us.

18 A. Yes.

19 Q. So -- and I've -- I've got some excerpts from  
20 those journals. I think there's about 500 pages or so,  
21 but I'm not going to go through all of those. Trust  
22 me.

23 A. Okay.

24 Q. My -- my first question, though, is just sort  
25 of the context for these journals.

1                   Why did you keep them?

2                   A.    Oh, they are notes.    So when I -- when I go  
3                   to meetings, depending on the setting, right, I don't  
4                   want to be heads down typing, right, while I'm supposed  
5                   to be having eye contact with my customers.    So I write  
6                   down notes, and then I'll write down, you know, things  
7                   that I need to follow up on immediately and still  
8                   maintain the eye contact.

9                   So I take notes, and then I make sure that,  
10                  you know, I -- yeah, so that's basically what I do.  
11                  And sometimes if the setting is appropriate, you know,  
12                  then I will use a computer.    Like if everyone is doing  
13                  collaborating on a computer, then that's okay.

14                  So sometimes I may have less or more for a  
15                  certain meeting, but for the most part when I'm in  
16                  meetings, I like to maintain the eye contact and, you  
17                  know, the dialogue with customers rather than busy  
18                  typing and correcting or something.    I just, you know,  
19                  write it and then sort it out later.

20                  Q.    So would you -- would you take the notes  
21                  contemporaneously, like, in the meeting or did you  
22                  recreate the notes later?

23                  A.    No, no.    I take it right -- right there.

24                  Q.    Okay.

25                  A.    And then if it's something -- a point that I



1 need to share, then I would put it on my computer and  
2 disseminate it to the right people or put it in a --  
3 you know, keep a more permanent copy on my -- on my  
4 laptop. So my handwritten notes are the first, right,  
5 notes taken that I do.

6 Q. Okay. So looking at Exhibit 66 here, the  
7 first page is kind of black.

8 Is that just the cover of the journal?

9 A. Yeah, it's the -- it's -- it's a hard cover  
10 journal.

11 Q. Okay. And it looks like if you look on  
12 Page 2, January 8, 2019 is the earliest entry I think  
13 we had.

14 Is that when you started taking notes?

15 A. No. This is -- so I take notes when I  
16 usually have meetings with other people when I'm  
17 working on -- like, for instance, working on my actness  
18 (sic), right, working on research, right? I don't take  
19 notes on my notepad because I can just put that into my  
20 computer. This is a meeting actually with the client.

21 Q. Right. Maybe I didn't ask my question  
22 clearly.

23 Do you have notes which predate  
24 January 8th, 2019?

25 A. Predate, like --

1 Q. From earlier than January 18, 20- --  
2 January 8, 2019?

3 A. I have a lot more notebooks, yes.

4 Q. You still have them?

5 A. Probably, yeah, some -- somewhere maybe,  
6 yeah.

7 Q. Have you looked at those to see whether  
8 there's any entries in there about meetings or your  
9 performance in 2018?

10 A. No, I have not, but I would have remembered  
11 those meetings.

12 Q. Did you take notes every meeting you had?

13 A. It depends on what's discussed in the  
14 meeting. If I, you know, feel that these are important  
15 notes and I need to make sure that I keep track of or  
16 follow items that I need to keep track of, then yes.

17 Q. Have you misplaced any of those notebooks  
18 that you used to have?

19 A. I wouldn't say misplace. I used to -- what I  
20 would do with IBM, I had a couple of file cabinets in  
21 the Forest City office that I had kept some older  
22 notebooks there. And when IBM decided to consolidate  
23 office, they packed them up for me in boxes.

24 I -- apparently I did not go there to pick  
25 them up in time, so they just tossed out the whole box.

1           So I don't know -- I don't even know what I lost from  
2           those file cabinets.

3           Q.     Got it.

4           A.     Yeah.

5           Q.     And when was that?

6           A.     This was -- the IBM Forest City  
7           consolidation, probably -- I would say probably three  
8           or four years ago. Definitely three or four years ago.

9           Q.     Okay. Are there any journals or notebooks  
10          that you have with you that you misplaced or don't have  
11          anymore?

12          A.     Well, I wouldn't know that until I go search  
13          to see whether -- what -- what I have. These two  
14          happened to be underneath my desk, so I was trying to  
15          look back, you know, on what I -- what was said, what  
16          was done, yeah.

17          Q.     You haven't gone to look to see what other  
18          notebooks you might have?

19          A.     No, I -- I have not.

20          Q.     Do you think you might have other notebooks  
21          related to -- from the 2019/2020 time period?

22          A.     No, because these are all dated. So this one  
23          is from 2019, right? And then I think the -- and then  
24          it goes into beginning of the next one, I think, right,  
25          2019, and then -- and then 2020 is part of the second

1 notebook.

2 Q. Okay.

3 A. Yeah.

4 Q. Okay. Okay. Let me ask you to go to Page 7  
5 of this exhibit. It's the number 150 in the lower  
6 right-hand.

7 A. Okay.

8 Q. I think it's dated April 4, 2019.

9 You see that?

10 A. Yes, uh-huh.

11 Q. It says "QBR."

12 So would this have been notes from one of  
13 your Quarter Business Reviews?

14 A. Yes.

15 Q. Got it.

16 Down under Target it says "Help needed/date."

17 Do you know what that means?

18 A. I don't -- I don't remember specifically.  
19 Usually, you know, it's -- if I -- if I -- I don't  
20 remember specifically at that time what that meant.

21 Q. Okay. That's fine.

22 A. Yeah.

23 Q. All right. Go to page -- let's say two pages  
24 later, Page 9 of the document --

25 A. Uh-huh.

1 Q. -- dated 4/12/19.

2 You see that?

3 A. Yes.

4 Q. It says -- I think it says "Weekly call with  
5 Amy," right?

6 A. Uh-huh.

7 Q. And it says "300,000 per week."

8 You see that?

9 A. Yes.

10 Q. What is that referring to?

11 A. I can't say I remember. It's -- it's -- I'm  
12 going to guess it's pipeline. I don't know. I  
13 don't --

14 Q. Okay. All right. Let me ask you to go to  
15 Page 16 --

16 A. Okay.

17 Q. -- of this exhibit.

18 A. 16, yes.

19 Q. This is dated July 17, 2019, right?

20 A. Yes.

21 Q. It looks like you had a one-on-one with Todd;  
22 is that right?

23 A. Yes.

24 Q. How often would you have one-on-ones with  
25 Todd?

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1           A.    Not often.  This is the one where he asked me  
2           to become a DES.

3           Q.    A DES Hunter?

4           A.    Yes.

5           Q.    Got it.

6                   And he explained the -- the program to you in  
7           this meeting?

8           A.    Yeah.  So he explained that, you know, the  
9           portfolio, the project set, the DES rep, right, and  
10          on -- on here he said there are 30 accounts, but I  
11          don't think that's the normal program.  And he -- I  
12          wrote down, I think that's "Ginni."  So she wrote  
13          down that -- go up.  I guess he said that Ginni brought  
14          in on the program of the CEO.  And then --

15          THE REPORTER:  I'm sorry.  Excuse me.  Excuse me.

16          THE WITNESS:  I mean, he told me Nicki Rich was a  
17          software technical specialist, but then he didn't have  
18          a software rep's name for me.

19                   That's all I can make out of this.  So it was  
20          a very high-level introduction of he would like me to  
21          become a DES Hunter, and this is the -- yeah.

22          BY MR. BARNES:

23                  Q.    And then if you look at the next page, it  
24          looks like those are notes from a one-on-one with  
25          Amy --

1 A. Uh-huh.

2 Q. -- two days later on July 19, right?

3 A. Right.

4 Q. And there's a number of accounts listed here  
5 with question marks next to them.

6 Do you know what that means?

7 A. Because I don't think they assigned a primary  
8 storage rep yet.

9 Q. Okay.

10 A. Like American Express, Pepsico, Penney,  
11 Dan -- Dan Nielson. So he had -- he had those accounts  
12 for a couple years already, so then he knew that those  
13 were his accounts.

14 Q. Got it.

15 A. Yeah.

16 Q. Okay. That makes sense.

17 A. Yeah.

18 Q. And sorry, this is kind of tedious. I just  
19 wanted to make sure --

20 A. I know.

21 Q. -- I understand --

22 A. No, no problem.

23 Q. -- what this says.

24 All right. If you could go to Page 23.

25 A. Uh-huh. 23.

1 Q. It says "4QQBR."

2 You see that?

3 A. Yes.

4 Q. And then "Todd," his name is underlined.

5 Next to that it says "What works, what doesn't work."

6 What is that referring to, if you remember?

7 A. What -- what -- I think he was referring to  
8 some of -- IBM has a lot of different promotion  
9 programs, right, like where there's zero percent  
10 financing, you know, injection (sic). If you buy  
11 something -- one thing, you know, we'll give you free  
12 something else, right, you know.

13 So if I recall correctly, he was asking us,  
14 you know, what some of these programs are, what --  
15 which one works, which one doesn't work. That --  
16 that's the only thing that I can remember that he would  
17 ask, you know.

18 Q. Okay.

19 A. Yeah.

20 Q. And then let me ask you to go back to

21 Page 13.

22 A. Sure.

23 Q. Sorry, I skipped one.

24 A. No, that's okay.

25 It says "2Q Recovery Plan" at the top.

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1 A. Uh-huh.

2 Q. Right?

3 A. Yes.

4 Q. What is that referring to?

5 A. So you know how we talked about if we kind of  
6 divide the half, right, you know, first --

7 Q. Right. I think --

8 A. You see the 40 percent/60 or 45/55? Depends  
9 on the year and the pay period, right?

10 Q. Right.

11 A. So -- so if you didn't meet that first  
12 quarter, then they tried to create a plan to recover,  
13 so that's what it is, 2Q recovery plan.

14 Q. Got it.

15 So this is a plan to talk about how to hit  
16 your --

17 A. Right.

18 Q. -- your first half goal by the end of the --

19 A. Right.

20 Q. -- second quarter --

21 A. Yeah, yes.

22 Q. -- right?

23 A. Yes.

24 Q. Okay.

25 A. Yeah.

1 Q. And then if you look at the -- the last page  
2 of this exhibit, I assume that's just the back cover?

3 A. Let me go there. Sorry.

4 Q. Similar to the front?

5 A. Yes, that's just the back cover. It's a --  
6 it's a black cover hard -- hard cover notebook.

7 Q. Got it.

8 A. And then I don't know whether the rubber  
9 band -- that black line you see up there could be the  
10 rubber band that you tie it up.

11 Q. Got it.

12 A. Yeah.

13 Q. All right. So take a look at Exhibit 67,  
14 please.

15 (Whereupon Exhibit 67 was marked for  
16 identification, a copy of which is attached hereto.)

17 THE WITNESS: Excuse me. Do you mind if I go get  
18 a headset? Because the noise is pretty loud -- loud  
19 behind me, unless you don't -- you don't hear it.

20 MR. BARNES: No, go ahead. I -- I can't hear it.

21 THE WITNESS: Oh, you can't?

22 MR. BARNES: But if you --

23 THE WITNESS: Okay. That's fine. I just don't  
24 want it to be a distraction.

25 MR. BARNES: No, I can't hear anything other than

1           you, so...

2           THE WITNESS: Okay. That's fine then.

3           BY MR. BARNES:

4           Q. Okay. Exhibit 67 --

5           A. Okay.

6           Q. -- which I believe is another notebook you  
7           produced to us or excerpts from that.

8           A. Yes. Yes.

9           Q. I like your smiley faces, by the way. Well,  
10          I guess one of them's a frowny face, actually. I just  
11          noticed that.

12          A. Well, I -- I -- I put this, so that's --  
13          that's a straight face. I put all the ones. It comes  
14          with the notebook, all those little, like, stickers.

15          Q. Yeah.

16          A. That's how I put my name there. I put my  
17          name, pick one of each.

18          Q. Got it.

19          A. Yeah.

20          Q. All right. So on the second page of this  
21          exhibit there's an entry from 10/31/19.

22                    You see that?

23          A. Uh-huh.

24          Q. It -- and it's titled "DES  
25          Role/Responsibilities."

1                   You see that?

2                   A.    Yes.

3                   Q.    And over under the date you've got "Sandy,"  
4                   "Don Custardo" and "Phil Weed," right?

5                   A.    Yes.

6                   Q.    So does that refresh your recollection about  
7                   whether Don Custardo was also in the DES role?

8                   A.    Yes.

9                   Q.    And you think he was?

10                  A.    Now I do.  I -- I -- yeah.  I mean, I think  
11                  even earlier when you showed me the email that he was  
12                  attached to, but yeah.

13                  Q.    Okay.  Got it.

14                  And so do you remember what you were talking  
15                  about at this point?  Since by now you had been a  
16                  couple months into the program.

17                  A.    This is the call that Sandy set up for me to  
18                  introduce me to Phil Weed, who is DES Hunter program  
19                  manager.

20                  Q.    Okay.

21                  A.    Yeah.  So I did not even know that Phil --  
22                  Phil -- I -- I take it back.  I know Phil because he  
23                  used to do power sales when I was a power rep.  So I  
24                  know who he was, but I did not know that he was a  
25                  DES Hunter program manager until around this time when

1 Sandy asked me, "Have you been participating in these  
2 weekly calls?"

3 I said, "No one even told me that there was  
4 Phil and there were weekly calls."

5 So Sandy set up this call and just brought in  
6 me, right, to make sure that I am introduced to Phil,  
7 and then she also brought in Don, you know, just  
8 because -- so that Phil knows both of these people on  
9 her team.

10 Q. Do you know whether this was the first time  
11 Don was being introduced to Phil?

12 A. That, I don't know, yeah.

13 Q. Okay. All right. Scroll down to Page 5.

14 A. Okay.

15 Q. And middle of the page, it looks like there's  
16 an entry for 2/19/20.

17 You see that?

18 A. Yes.

19 Q. And to the left of that, I think that says  
20 "1Q effort."

21 You see that?

22 A. Yes.

23 Q. Was there a discussion about your effort in  
24 the first quarter?

25 A. No. This is still on first quarter, so this

1 is a call that I had with my system architect,  
2 Brad Ashbaugh, right, trying to outline what our, you  
3 know, strategies are, what some of our, you know, plan  
4 of attacks are, right, and then we kind of segment out  
5 the different accounts on -- on how to go about them.

6 Q. Got it.

7 A. So I just call it, like, that's our call for  
8 1Q effort, right? That's the call that he and I had.

9 Q. Okay. Understood.

10 A. Yeah.

11 Q. I'm just looking at my notes to see here.

12 A. Yeah.

13 And -- and Brad was assigned to team up with  
14 me around that time. That's why we immediately got on  
15 a strategy call.

16 Q. All right. Let's take a look at Page 17.

17 A. Okay.

18 Q. It looks like this was a June 1st, 2020  
19 meeting with Robert; is that right?

20 A. That's the -- yeah, the cadence. Yeah, that  
21 looks like it, yes.

22 Q. Your weekly cadence with Robert?

23 A. Yes. So there are actually three meetings on  
24 here, right? So the -- so if you look at the little  
25 dot, I have weekly cadence with Robert, software call

1 with Amy, and then the Raley's opportunity call.

2 Q. Got it.

3 A. Yeah.

4 Q. Okay. So looking up at the weekly cadence  
5 with Robert, it says "Forecast 3Q 240k."

6 You see that?

7 A. Yes.

8 Q. Versus, is that 690k or 640k?

9 A. I think 640 maybe, yeah.

10 Q. Okay. So you were talking with Robert about  
11 your third quarter forecast?

12 A. No. This is -- this is the first half -- I  
13 mean third -- forecast 3Q. Yes, forecast 3Q, yeah.  
14 Yes, I guess so.

15 Q. And under that it says "2H," originally said  
16 "960k." Then that's crossed out and "1.6 million" is  
17 written in there, right?

18 A. Yes.

19 Q. Do you know what that's referring to?

20 A. No, I don't remember that.

21 Q. Do you remember Robert telling you that the  
22 expectation was 1.6 million for the second half?

23 A. No. I -- I -- no, I don't remember that  
24 because I won't even know whether I have these accounts  
25 in second half. So these are what I'm just loading up

1 for whoever's going to pick up these accounts.

2 Q. Did anyone tell you one way or the other  
3 whether you were going to have these accounts?

4 A. No. You won't know until the account  
5 assigner comes out in second or third week into the --  
6 into the half.

7 Q. But in this meeting you were still talking  
8 with Robert about your forecast for 3Q and 4Q?

9 A. It's not forecast -- well, let me put it this  
10 way. As -- as far as putting into the Atlas tool.

11 Q. Okay. And so y'all were discussing what you  
12 should put into the Atlas tool in terms of forecast for  
13 Q3 and Q4.

14 Is that what you're saying?

15 A. In terms of, yeah, the pipeline, yeah. Yes.

16 Q. Okay. Okay. All right. Let me ask you to  
17 go to Page 19 of this exhibit.

18 A. Okay.

19 Q. June 18, 2020, "Checkpoint call with Robert."  
20 You see that?

21 A. Yeah. That's the one that -- yeah.

22 Q. Is that where you were given the PIP?

23 A. Yes.

24 Q. Okay. And then I think you said after that  
25 you didn't have any meetings with Robert until



1 June 30th; is that right?

2 A. I might have one or two calls with him, but,  
3 you know, we didn't have the cadence call regularly  
4 anymore.

5 Q. Okay. So you go to the next page. See  
6 "6/22/2020"?

7 A. Yeah.

8 Q. It looks like you had a weekly cadence with  
9 Robert, right?

10 A. No. So what I usually do is I would write  
11 down the date and then the topic, and then I don't -- I  
12 don't think this one we had. Otherwise, if I -- if I  
13 had anything that we talked about, I would have notes  
14 on it. We didn't have that call. So I was ready for  
15 the call, but we didn't have the call.

16 Q. Well, if you go back to the previous page,  
17 6/18/2020, you know you had that meeting, right?

18 A. I know we had the meeting because all we  
19 talked about was the PIP. He just, you know, sent me  
20 the PIP, you know, so everything is on the PIP.

21 Q. And you didn't write anything in your  
22 notebook on --

23 A. I didn't write anything down in my notebook,  
24 yeah.

25 Q. Okay. And then if you go to Page 22.

1 A. 22. Okay.

2 Q. At the top it says "IBM checking in."

3 A. That -- that -- I started writing a script  
4 when I cold-calling to his customers. This call was  
5 like a telemarketer. I want to have a script so I  
6 don't forget mentioning the points. So I started  
7 writing it down on my notebook.

8 And then Brad, my system architect, said,  
9 "Okay, let's have the same script," so I think we  
10 transferred it into, like, a document that we share.

11 Q. Got it.

12 A. Yeah. Yeah, it's a script.

13 Q. Okay. If you go to the next page, this looks  
14 like a different notebook; is that right?

15 A. Yeah, it was, because I explained to you the  
16 person who was helping to scan is -- I ran out of pages  
17 on my hard cover book, so -- and I didn't -- so I  
18 started just taking, like, little notepads from home  
19 and use that. I said, you know, you can go ahead and  
20 copy the individual pages, so they're just a little  
21 notepad that I was using after I used up all the pages  
22 on -- on the black notebook.

23 Q. Okay.

24 A. Yeah.

25 Q. And this entry, this first entry is

1           7/14/2020, right?

2           A.     Uh-huh.

3           Q.     Is that right?

4           A.     Yes, yeah.

5           Q.     Okay. And it says "West bimonthly call"?

6           A.     Yes.

7           Q.     "Robert's quota 14 million."

8                     Who's Robert?

9           A.     Oh, Robert. Robert Cortez, I think. He  
10       shared with us his quota's 14 million.

11          Q.     Okay. Got it.

12          A.     Yeah.

13          Q.     Next page, it says "Bob Cocchiola"?

14          A.     Oh, I'm trying to remember --

15          Q.     Do you know who that is?

16          A.     -- who that is.

17                     That is probably someone that -- oh, that  
18       doesn't even look familiar anymore.

19          Q.     Okay.

20          A.     I don't know who that is anymore.

21          Q.     Then under that there's an entry for  
22       7/20/2020.

23          A.     Yes.

24          Q.     "Call with Brian Wilke"?

25          A.     Milkes, yeah.

1 Q. Milke?

2 A. M-i-l-k-e-s, Milkes.

3 Q. Who's that?

4 A. He is the new V.P. of System Sales. He  
5 basically took over Todd's position.

6 Q. Okay.

7 A. So this is at the beginning of second half.

8 Q. Where did Todd go?

9 A. I have no idea. The -- the owner says he  
10 is -- he is no longer in that position.

11 Q. Okay. Under that you say "Not sure how my  
12 PIP could have happened this way."

13 What does that mean?

14 A. That's what -- what Brian said to me, because  
15 I explained to him, you know, that I got a PIP and this  
16 is how. So -- and then he said that, "I don't know how  
17 your -- your PIP could have happened this way."

18 Q. Did he say anything other than that?

19 A. He said that -- what did he say? He said  
20 that something along the line that, "I -- I wouldn't  
21 have done it this way," so -- but then he wanted to go  
22 find out, right? Yeah, so...

23 Q. Okay.

24 A. Yeah.

25 Q. Do you remember anything else about that

1 conversation?

2 A. Oh, what else did he say? No, he just  
3 sounded kind of surprised, right? And -- and it was a  
4 very short conversation because I think I only set up  
5 maybe 15, you know, 30 minutes because he had just  
6 gotten on board to become the V.P. of System Sales, so  
7 he was, you know, in place for maybe two weeks at most,  
8 yeah, two weeks.

9 And then -- but because I knew him from my  
10 service sales days, right, and also pondering with him  
11 when storage -- when I tried to partner with the power  
12 server -- power server rep so that I -- I knew him -- I  
13 knew of him, I should say. I didn't really know him  
14 that well, but he knew of me. So I set up a call with  
15 him, and that was it.

16 Q. Okay.

17 A. Yeah.

18 Q. And if you go --

19 A. Yeah.

20 Q. I'm sorry. Go ahead.

21 A. No, no. That's okay. I think he had to  
22 reschedule once before we had this call on this day.

23 Q. Okay. If you look at the next page, there's  
24 some notes here.

25 Do you know what notes those are from or what

1 meeting those notes are from?

2 A. That was from -- so what happened was after I  
3 talked to him the first time, he said, "I'm going to go  
4 talk to, you know, some people, go find out what  
5 happened, what went on."

6 And then he came back, and I can't even --  
7 I -- I didn't have -- I'm surprised I didn't put a date  
8 on it. And he -- you know, he -- I -- we connected  
9 again after he -- he supposedly talked to people, and  
10 that's when he said, you know -- I kind of jot down  
11 the -- the words he used. "I don't know how he got  
12 here," but he can -- nothing he can do now because the  
13 PIP is already in the system, and then that he got  
14 involved too late because I guess I didn't inform him  
15 until too late.

16 And he did say that if I felt the PIP was  
17 mishandled or not justified, report to H.R. and -- but  
18 then he also told me that he didn't talk to  
19 Stacie Mason, Todd, or Robert. Those are the three  
20 people in my management chain when I got the PIP. He  
21 talked to, I think, another V.P., John Rafferty, and  
22 some other people, some other executives.

23 Q. Okay.

24 A. Yeah.

25 Q. And so you -- but you did -- you did not

1 report it to H.R., right?

2 A. I did not report it to H.R. because my -- my  
3 understanding from Robert, right, because he and I  
4 connected on the 30th and he said that, "Well, because  
5 you missed the 30th goal, that means you -- you know,  
6 you -- you are out." And he -- once again, he said,  
7 "It's all about the numbers," right? So I missed that  
8 number, so I was out.

9 Q. And -- but Brian told you if you thought the  
10 PIP was not justified, you should report it to H.R.,  
11 right?

12 A. He did say that, yeah, but that's -- this is  
13 already in July, right, late July. This is when I'm  
14 about to be -- about to hand in my badge.

15 Q. Okay. All right. Can you think of any --  
16 any emails or other documents that you had related to  
17 the PIP, your performance, your termination that --  
18 that you have misplaced since that time period?

19 A. No, I -- I didn't. I base -- I -- I just  
20 look at the PIP as an official document, so I just went  
21 with whatever was sent to me. I -- I don't have any  
22 other emails because Robert and I didn't talk about the  
23 PIP after -- after it was issued to me.

24 Q. Okay. And you've given your attorneys all  
25 the documents related to your performance and the PIP

1 and your termination?

2 A. All that I have, yeah. I mean, I -- I  
3 didn't -- I didn't, like, save a copy or print a copy  
4 of everything, right, when -- before I turned in my  
5 laptop, so...

6 Q. Right, I understand that. I understand that.  
7 I'm just -- I want to make sure that --

8 A. Yeah.

9 Q. -- after you left IBM, you kept everything  
10 and you've given it all to your attorneys?

11 A. The -- the -- yeah, that is, I guess like you  
12 said, pertains to this PIP, right?

13 Q. Right.

14 A. But -- yeah, I -- I didn't even think that  
15 these notebooks have any consequence because they're  
16 just my own notes taking.

17 Q. Do you think there would be other --

18 A. No, I -- no, I don't have any other  
19 notebooks, yeah.

20 MR. WILLIAMS: Nelly, let him just finish his  
21 question.

22 THE WITNESS: Oh, sorry.

23 MR. WILLIAMS: That's okay. That's okay.

24 THE WITNESS: Sorry.

25 BY MR. BARNES:



1 Q. You know where I'm going.

2 Any other notes that you had, you don't think  
3 you would have mentioned the PIP or your termination in  
4 those?

5 A. I'm sorry. Say that again.

6 Q. Any other notebooks you have --

7 A. Uh-huh.

8 Q. -- would the PIP or your termination be  
9 referenced in those?

10 A. No, I won't have anything.

11 Q. Okay. So in addition -- I don't want to  
12 rehash what we've already talked about, but is there  
13 any -- anything -- any other reason why you think that  
14 you were fired because of your age other than what  
15 we've already talked about today? Anything else that  
16 came to mind?

17 A. Anything else that came to mind?

18 Nothing that I can think of right now.

19 Q. Okay. Do you believe your testimony today  
20 has been truthful?

21 A. Yes.

22 Q. Is there anything you feel like we need to  
23 change or clarify or you feel like you need to change  
24 or clarify about your testimony so far?

25 A. Not that I can think of right now, yeah.

1 MR. BARNES: Okay. I don't have any further  
2 questions.

3 MR. WILLIAMS: I have just a couple. I can be  
4 pretty quick.

5  
6 EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Now, you spoke a little bit with Justin about  
9 the weekly DES calls.

10 Do -- do you remember those, that  
11 conversation?

12 A. Yes.

13 Q. I just want to make sure the record's clear.

14 When did you first become aware that those  
15 calls were happening?

16 A. In around mid-October.

17 Q. After then did you learn about any other  
18 trainings or resources for DES Hunters that you had not  
19 been provided prior to that?

20 A. I heard that there was a -- a one-week  
21 training before the half started for the DES Hunters,  
22 but I -- I -- I didn't go validate that. So that would  
23 have been, like, you know, either early July or late  
24 June.

25 MR. WILLIAMS: That's all the questions I have for

1           you.

2           THE WITNESS:   Okay.

3

4                           FURTHER EXAMINATION

5           BY MR. BARNES:

6                   Q.    Let me just -- I just want to follow up on  
7           that last point.

8                           Where did you -- who told you about this  
9           DES Hunter training?

10                   A.   Sandy.  So when she found out that there was  
11           such a team, like Phil Weed, right, then she said, "Oh,  
12           I heard that" -- you know, I -- I remember this, you  
13           know, clearly that she said, "I heard that they even  
14           got together for a whole week.  I don't know whether  
15           it's training or just kind of like a kickoff to -- so  
16           that everyone understands what their roles and  
17           responsibilities are before this even kick into gear in  
18           July," yeah.

19                   Q.    Okay.  Did you ask anyone for any of the  
20           training materials that may have been disseminated at  
21           that?

22                   A.    So as soon as I -- I got connected with Phil,  
23           I asked him for everything that, you know, he has  
24           shared with the team, and he did, yeah.

25                   Q.    He did give that to you?

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1           A.    He -- well, you know, it's like our place,  
2           place meaning, you know, our solutions, right, what --  
3           what solutions we're going to use to go target, you  
4           know, the competitive install base, right, materials  
5           like that. He did share that.

6           Q.    Did you ask him about this week of -- this  
7           week-long meeting?

8           A.    No, I didn't. No, I didn't.

9           MR. BARNES: All right. That's all I have.

10          MR. WILLIAMS: Nothing further from me.

11          THE WITNESS: Okay.

12          MR. BARNES: All right. We can go off the record.

13  
14                   (Whereupon the videoconference deposition  
15           concluded at 4:22 p.m. Signature under penalty of  
16           perjury.)  
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DECLARATION  
OF  
PENALTY OF PERJURY

I declare under penalty of perjury, under the laws of the State of California, that I have read the foregoing transcript, I have made any corrections, additions or deletions that I was desirous of making in order to render the within transcript true and correct, and

IN WITNESS WHEREOF, I have hereunto subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NELLY LEONG

